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80-1797

No. .....

IN THE

Supreme Court of the United States

October Term, 1980

RYAN OUTDOOR ADVERTISING, INC.,

Appellant,

vs.

SALINAS, a Municipal Corporation,

Respondent.

On Appeal from the Court of Appeal of the State of California for the First Appellate District.

JURISDICTIONAL STATEMENT.

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Questions Presented.

1. May the City of Salinas, an industrial and commercial center for Monterey County, California, totally prohibit all off-site outdoor advertising from 97 percent of its land area and effectively eliminate the same, by severe height restrictions, from the remaining 3 percent of its territory, without thereby abridging the freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution?

2. May the City of Salinas, consistently with the due process clause of the Fourteenth Amendment to the United States Constitution, utilize its police power so as to eliminate and completely destroy the lawful business of outdoor advertising where the legislative goals could be substantially achieved by less drastic means?

3. May the City of Salinas, consistently with the Fifth Amendment to the United States Constitution, compel removal of all of Appellant's signs without affording compensation to Appellant for the loss of distinct investment-backed expectations?

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JURISDICTIONAL STATEMENT.

REPORT OF OPINIONS BELOW.

The unreported Memorandum of Intended Decision of the Superior Court, County of Monterey, State of California, its Findings of Fact and Conclusions of Law, and its Judgment enjoining the maintenance and ordering the removal of Appellant's off-site advertising structures are reproduced in Appendix B.

The unpublished opinion of the California Court of Appeal for the First Appellate District, 1 Civ. No. 43194, is reproduced in Appendix A.

Jurisdiction.

The subject of this case is the constitutionality of an ordinance adopted by the City of Salinas, California, which would effectively prohibit all communication by off-site

sign and destroy the entire outdoor advertising industry within the city limits. The Court of Appeal for the State of California, First Appellate District, held the ordinance constitutional in an opinion dated December 2, 1980. The Supreme Court of California denied Appellant's Petition for Hearing on January 28, 1981. *See* Appendix C. A Notice of Appeal was filed in The Court of Appeal for the State of California, First Appellate District, on April 13, 1981, a copy of which is set forth in Appendix D.

The jurisdiction of this Court to review the final judgment of the Court of Appeal of the State of California is conferred by 28 U.S.C. § 1257(2) (1976).

Constitutional and Statutory Provisions.

Relevant portions of the First, Fifth, and Fourteenth Amendments to the United States Constitution and of Chapter 37 of the Municipal Code of the City of Salinas are set forth in Appendix E.

STATEMENT OF FACTS.

A. Essential Facts About Ryan's Communication Business.

Appellant herein operates the *only* standardized outdoor advertising plant in the California Central Coast region, which extends from Monterey-Salinas to a few miles south of Santa Barbara. Within this region, there are eight "submarkets" in eight cities, of which Salinas is one. Each of the eight areas would be uneconomic for Appellant to operate alone, but as a combined unit it is an effective, profitable operation. The Salinas area accounts for fifty percent of the plant's operation. Haskell Barry — expert witness on Appellant's outdoor advertising business, its value and operation — testified that Appellant's plant in the Salinas area was very "fragile" in that its value could be tremen-

dously impacted by the removal of a few structures from certain key areas.

Salinas, the largest city in Monterey County, is a self-contained community. It has a strong commercial and industrial base, with manufacturing, food processing, and agriculture forming the most substantial sources of income to its residents. Tourism is not a major industry in Salinas.

Appellant's outdoor advertising business, in Salinas and elsewhere, consists entirely of the communication of ideas — commercial, political, charitable or personal — and is the least expensive of all mediums of communication. Ryan's billboards have been used to introduce new products and new political candidates; to advertise a union's position in a strike; to stimulate enlistment in the nation's armed forces; and to convey numerous public service messages for noteworthy charitable organizations, such as the Red Cross. Some thirteen percent of the messages carried on Ryan's billboards are devoted to such public service communication.

B. Salinas' Legislative Effort to Abolish Outdoor Advertising.

Through a comprehensive zoning ordinance, Salinas has completely prohibited all off-site outdoor advertising in all city land zones, including manufacturing districts, with one minute exception, the CG Zone.[1]

---

[1]Respondent contends that billboards are also conditionally permitted, through a use permit, in the unclassified ("U") zoning districts, which comprise approximately ten percent of the City's land area. This contention is based on the ambiguous language in Section 37-178 of the Salinas City Code which states:

> "Any use permitted in any district as provided herein may be permitted in a "U" district; provided, that a use permit therefor shall first be secured."

Appellant submits that the evidence at trial clearly did not support any finding that billboards could realistically be maintained in such

(footnote continued on following page)

The CG (general commercial) zone comprises only three percent of the City's total land area and less than ten percent of the City's commercial and industrial areas. Manufacturing zones comprise nineteen percent of the City. All commercial districts (other than the CG district) comprise ten percent of the City's land area. Appendix B at 18a-19a. Salinas' own planning director could offer no rationale for the City's selection of the CG zone as the only allowable district for outdoor advertising.

Even within the tiny geographic area comprising the CG zone, off-site advertising structures are limited to a maximum height of 22 feet. Salinas City Code § 37-236.34(c). All of Appellant's outdoor advertising structures in the one allowed zone exceed 22 feet in height and are therefore nonconforming. Compliance with this height restriction in the CG district would be commercially impracticable because the obstructed visibility of such signs would render their value nil. Indeed, by complying with this height restriction, Appellant would be unable to meet the visibility standards set by the independent Traffic Audit Bureau upon whose recommendations Appellant's advertising customers rely in buying space. The standardized height of billboards, on an industry-wide basis, is generally set no lower than 35 feet.

"U" districts. Salinas' own director of community development testified that the only district wherein off-site advertising signs were permitted was the CG district. It was also established that no permits for outdoor advertising had ever been sought or granted in the "U" zone. The inherent improbability of the existence of a single billboard in the "U" zone is further established by the historic hostility of the City of Salinas to outdoor advertising in general, the fact that the procedures for obtaining any such permit required a public hearing, the fact that the "U" zone uses are only temporary and subject to use permit conditions, *see* Salinas City Code Section 37-251, and the fact that any such billboards would be subject to the unreasonable height restrictions of the CG district. *See* discussion *infra*.

The kinds of "on-site" signs permitted by the Salinas ordinance are limited by definition to signs used exclusively:

> "(a) To advertise the sale or lease of the property upon which such sign is located;
>
> "(b) To designate the name of the owner or occupant of the premises or to identify such premises;
>
> "(c) To advertise the business conducted or services rendered or the goods produced or sold upon the property upon which such sign is located if the sign is on the same side of any public street or highway and within eight hundred feet of the point on the property or within eight hundred feet of the entrance to the site at which the business is conducted or services are rendered or goods are produced or sold."
>
> Salinas City Code § 37-236.30(m).

Furthermore, the Salinas ordinance either bans entirely from all zoning districts or makes subject to a conditional use permit, "signs characterizing a person or object." *See* Salinas City Code §§ 37-236.31(C)(5), .32(C)(5), .33(C)(5), .34(B)(2), .35(C)(2), .36(B)(3).

C. Ryan's Outdoor Advertising Plant Is Totally Abolished Under Salinas' Comprehensive Zoning Ordinance.

Appellant's outdoor advertising structures in Salinas consist of thirty-four physical locations with eighty-five advertising faces which convey messages of various kinds. A map at Appendix F follows this statement of facts and depicts the geography of Salinas and the location of Appellant's advertising structures.

The "A" Series, 19 structures with 37 advertising faces shown as triangles on the map, were the subject of Salinas' complaint and consist of advertising structures in various commercial and manufacturing zones other than the CG

zone which are all rendered illegal under the challenged zoning ordinance.

The "B" Series, nine structures located in an area which was annexed to Salinas in 1974, known as the Santa Rita area, are shown as squares on the map. While these structures are in commercial zones and were legal before annexation, when annexed to Salinas the structures became non-conforming because they were not in the CG zone. They were subject to removal upon expiration of the zoning ordinance's five-year amortization period in 1979.

The third group of structures, the "C" Series are located in the CG zone and are shown as circles on the map. Each of them exceeds the lawful maximum height of 22 feet and are therefore non-conforming and subject to removal. After investigation Appellant found that none of these structures could be lowered and still maintain industry visibility standards nor could they be relocated within the small CG zone where they would be conforming as to height.

Testimony at trial established that business losses from removal of all structures amount to $302,902.00.

D. The Litigation.

In this litigation commenced by Respondent, a mandatory injunction was sought seeking removal of nineteen (19) of Appellant's off-site advertising signs in the City of Salinas. Appellant cross-complained alleging that the ordinances relied on by the City were arbitrary, unreasonable, and unconstitutional.

The Superior Court concluded (1) that Salinas Ordinance No. 1103, as amended by later ordinances, was a valid exercise of the police power in promoting traffic safety and aesthetics; (2) that the amortization period was reasonable and no other compensation was necessary; and (3) that the ordinance was not an unlawful restraint of freedom of

speech. Appendix B at 21a-25a. The Court enjoined the maintenance and ordered removal of Appellant's off-site signs by judgment entered July 12, 1977. Appendix B at 36a.

On December 2, 1980, the Court of Appeal for the First Appellate District of the State of California affirmed the lower court in upholding the constitutional validity of Ordinance No. 1103, and ordering the removal forthwith of all of Appellant's non-conforming off-site advertising signs. The court of appeal based its decision entirely upon the controlling authority of *Metromedia, Inc. v. City of San Diego,* 26 Cal.3d 848, 610 P.2d 407, 164 Cal.Rptr. 510 (1980), *prob. juris. noted,* 66 L.Ed.2d 127 (Oct. 14, 1980) (No. 80-195), a decision now pending on appeal before this Court.

The appellate court first determined that the ordinance was a valid exercise of the police power in that, as *Metromedia* had reasoned, it could not be said that the legislative determination that the ordinance would serve the goals of promoting traffic safety and aesthetics was "manifestly unreasonable." Appendix A at 8a.

The court next discussed Appellant's argument that the destruction of its business was a taking, not a regulation, by noting that termination of non conforming uses could be mandated without compensation if the legislation provides a "reasonable" amortization period. Appendix A at 9a.

The court finally dismissed the First Amendment challenge, finding the ordinance to be a lawful regulation of the time, place and manner of speech under the tripartite test employed in *Metromedia,* which test requires that: (1) the restriction on speech must be "'justified without reference to the content of the regulated speech," (2) the restriction must "serve a significant governmental interest," and (3)

in so doing, the restriction "must leave open ample alternative channels for communication of the information." Appendix A at 11a.

The Supreme Court of the State of California denied a hearing to Appellant on January 28, 1981. *See* Appendix C.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

I.

THE SALINAS BILLBOARD ORDINANCE IS CONSTITUTIONALLY INDISTINGUISHABLE FROM THE SAN DIEGO ORDINANCE CHALLENGED IN THE METROMEDIA CASE.

The constitutionality of a billboard ordinance which effectively prohibits communication through the medium of off-site sign structures throughout a city area and which effectively and entirely destroys the business of outdoor advertising in that city is the quintessential issue raised by the appeal from the California Supreme Court case presently pending before this Court — *Metromedia, Inc. v. City of San Diego,* 26 Cal.3d 848, 610 P.2d 407, 164 Cal.Rptr. 510 (1980), *prob. juris. noted,* 66 L.Ed.2d 127 (Oct. 14, 1980) (No. 80-195).

In identical fashion, Appellant herein complains of a billboard ordinance enacted by the City of Salinas which has a similar prohibitive effect upon the freedom to communicate through the medium of billboards and upon the freedom of Appellant to engage in the lawful business of outdoor advertising.

It is indeed true that the ordinance herein permits billboards to exist in 3% of the City's territory. Such "existence," however, is strictly theoretical, given the commercial realities of the outdoor advertising business, *i.e.*,

billboards do not survive at a height of 22 feet. As the California Supreme Court itself remarked in *Metromedia,* to suggest that any principled differences exist, for purposes of constitutional analysis, between an ordinance that prohibits billboards throughout the City and one that bans them from 97% of the City's territory, would be the height of sophistry. *Metromedia, Inc. v. City of San Diego,* 26 Cal.3d at 865; *cf. Young v. American Mini-Theatres, Inc.,* 427 U.S. 50, 71 n. 35 (1976) (equating legislation that has the effect of "suppressing, or greatly restricting access to, lawful speech").

In terms of their impact on Fourteenth and First Amendment values, the ordinances are alike: In the name of traffic safety and aesthetics, each effects the elimination of an entire medium of communication and the destruction of a lawful and legitimate business.

II.

THE SALINAS ORDINANCE IS AN UNCONSTITUTIONAL ABRIDGMENT OF THE FIRST AMENDMENT IN THAT IT EFFECTIVELY ELIMINATES AN ENTIRE MEDIUM OF COMMUNICATION.

A. The Salinas Zoning Ordinance Does Not Merely Regulate the Time, Place and Manner of Speech, but Rather Effects the Deliberate Suppression of All Communication by Off-Site Signs.

It cannot be doubted that the vitality of the communicative freedoms protected and promoted by the First Amendment depends entirely upon an equal respect by government for the existence and diversity of the media through which people choose to express their ideas. As one federal judge has recently noted, in ruling on anti-billboard legislation enacted by the State of Maine:

> "Whether we view it from the speaker's perspective, and say that the choice of medium is a component of the personal fulfillment fostered by the First Amendment, *see Cohen v. California*, 403 U.S. at 25-26, or from the audience's perspective, and say that each medium makes a unique sensory and psychological impact that cannot be precisely duplicated by any other, the speaker's autonomy in medium selection is a factor that should not be undervalued. When the state would outlaw a mode of expression — particularly a mode that has traditionally received society's approval, or at least tolerance — more is involved than simply whether the speaker can adequately convey her message using means the state will permit her to employ. *Cf. Schneider v. State*, 308 U.S. 147, 163 (1939) ("one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place"). *See also Thornhill v. Alabama*, 310 U.S. 88, 95-96, 105-06 (1940)."
>
> *Donnelly & Sons v. Campbell*, No. 79-1575, Concurring Slip Op. at 7 n. 3 (1st Cir. Dec. 22, 1980) (Pettine, J., concurring).

Indeed, this Court has recognized on numerous occasions the values inherent in the *preservation* of a traditionally accepted, lawful medium of expression, and has struck down laws that, in pursuit of legitimate, non-speech related goals, have "regulated" such a medium to the point of extinction. *See, e.g., Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977) (real estate "for sale" signs); *Saia v. New York*, 334 U.S. 558 (1948) (sound trucks); *Martin v. City of Struthers*, 319 U.S. 141 (1943) (door-to-door solicitation); *Schneider v. New Jersey*, 308 U.S. 147 (1939) (handbills); *Lovell v. City of Griffin*, 303 U.S. 444 (1938) (distribution of circulars, handbills, etc.).

Like sound trucks, leaflets, and handbills, billboards do not serve any purpose or meaning apart from their potential for communication. The United States Congress has recognized outdoor advertising as one of the nation's separate and distinct "communications media" in the Federal Campaign Communications Reform Act, 47 U.S.C. § 801(1) (repealed 1974). Any ordinance banning their existence can hardly be said to impose merely an "incidental" restriction on expression that might be justified by a "sufficiently important governmental interest in regulating the non-speech elements." *Donnelly & Sons v. Campbell*, No. 79-1575, Concurring Slip Op. at 1 (quoting *United States v. O'Brien*, 391 U.S. 367, 376 (1968)).

Moreover, the ordinance herein cannot be classified as a typical time, place, and manner restriction in that such legislation generally involves only *some* degree of limitation on a mode of expression. *Id.* at 5; *e.g.*, *Grayned v. Rockford*, 408 U.S. 104, 116-21 (1972) (anti-noise ordinance involving grounds adjacent to school); *Cameron v. Johnson*, 390 U.S. 611 (1968) (picketing that unreasonably interferes with access to public buildings); *Adderley v. Florida*, 385 U.S. 339 (1966) (demonstrations on jailhouse grounds); *Cox v. Louisiana*, 379 U.S. 559 (1965) (picketing or parading near courthouse). Writing for the Court in *Kovacs v. Cooper*, 336 U.S. 77 (1949), in which case this Court sustained a municipal sound truck ordinance, Justice Reed commented:

> "Unrestrained use throughout a municipality of all sound amplification devices would be intolerable. *Absolute prohibition* within municipal limits of *all* sound amplification, even though reasonably regulated in place, time and volume, is undesirable and probably unconstitutional as an unreasonable interference with normal activities." *Id.* at 81-82 (emphasis added).

In Justice Reed's mind, "absolute prohibition" of a medium of expression was something distinctively and qualitatively different from *regulation* of that medium in place, time, and manner.

Indeed, the very nature of the time, place and manner doctrine indicates its unsuitability as a touchstone in assessing laws that abolish an entire medium of communication. Such laws can easily be viewed as content-neutral; "significant" governmental interests can readily be invoked; and "ample alternatives" may always be found to exist (as the lower court herein found) in the other media that remain.

A recognition, therefore, that some *affirmative* obligation exists on the part of government — even at the cost of some distraction, some disorder, some litter — to protect the commonly accepted channels of communication is crucial; otherwise, the state could eliminate each medium, one by one, until but one remained. *See Donnelly & Sons v. Campbell,* No. 79-1575, Concurring Slip Op. at 7 n. 3; Ely, "Legislative and Administrative Motivation and Constitutional Law," 79 Yale L.J. 1205, 1335-36 (1970).

This Court has recently held in *Central Hudson Gas v. Public Service Commission,* 100 S.Ct. 2343 (1980), that the suppression of even *commercial* speech is permissible only when (1) a substantial government interest is (2) directly advanced (3) by a statute no more extensive than necessary to serve that interest. 100 S.Ct. at 2350. If the regulation of even commercial speech must be shown to be "no more extensive than necessary," an ordinance which suppresses all commercial *and* ideological speech by sign can hardly survive constitutional scrutiny.

B. The Ordinance Cannot Be Sustained Even as a Regulation of the Time, Place and Manner of Speech.

Even assuming that the present ordinance could be characterized as a time, place and manner regulation of speech, it fails to meet the very tripartite test employed by the California Supreme Court in *Metromedia* and by the court of appeal below.

First of all, the statute is *not* content-neutral, as demonstrated by the content-related definition of permissible *on*-site signs and by the prohibition of signs "characterizing a person or object." *See* Statement of Facts, *supra* at 5.

Secondly, whether the ordinance *actually* serves significant governmental interests was never seriously examined either by the court of appeal below or by the California Supreme Court in *Metromedia*. Both decisions merely determined that the legislature could have rationally concluded that a relationship existed between the ends to be served — traffic safety and aesthetics — and the means employed for serving that end. *See* 26 Cal.3d at 859-63; Appendix A at 11a.

The United States Court of Appeals for the First Circuit has recently disapproved of the *Metromedia* decision to the extent that the court therein employed the time, place and manner doctrine without regard "to the question of the *substantiality of the connection* between the challenged measure and the state interests asserted to support it." *Donnelly & Sons v. Campbell*, No. 79-1575, Slip Op. at 12 (emphasis added).

That such a means-end analysis should be employed in the present context becomes apparent upon examining the nature of that context. The essentially "toothless" scrutiny of legislation which results from the employment of the

rational basis test may be appropriate for purely economic regulation that does not impinge on constitutional values. *U.S. v. Carolene Products Co.*, 304 U.S. 144, 152 n. 4 (1938). Where speech is impacted, however, something more should be required. This was made clear in the case of *Grayned v. City of Rockford*, 408 U.S. 104 (1972), which case dealt in part with a city ordinance prohibiting the willful making of any disturbing noise while on school grounds during school sessions. In assessing the constitutionality of this ordinance, which clearly regulated in terms of time, place and manner of speech, the Court stated:

> "Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily the fact that *communication* is involved; the regulation must be *narrowly tailored to* further the state's legitimate interest." 408 U.S. at 116-17 (emphasis added).

The failure of the appellate court below and of the California Supreme Court, upon which the appellate court relied, to engage seriously in any means-end analysis of the challenged ordinances and their asserted goals renders these opinions constitutionally suspect. Indeed, employing such an analysis, the Court of Appeals for the First Circuit in *Donnelly & Sons* determined that the goal of traffic safety could not be said to be *substantially* served by the statute and, thus, on its own, could not justify the law's abridgement of speech. Slip Op. at 14. While the nexus between the goal of *aesthetics* and the means employed by the present ordinance may be more easily demonstrated, far more serious dangers are inherent in permitting a local zoning board to invoke the ephemeral and talismanic phrase, "aesthetics," whenever it desires to eliminate what *it* considers to be non-aesthetic. The subjectivity inherent in pursuit of such a goal confers dictatorial power upon a legislative body to impose its own values, its own aesthetic concept, on all

land owners and land users. *See* Brief of Appellants at 44-45, *Metromedia, Inc. v. City of San Diego,* No. 80-195 (1980). The interests protected by the First Amendment ought not to be so easily jeopardized.

Finally, it cannot be rationally argued, especially for those using Appellant's billboard for *ideological,* rather than commercial, purposes, that adequate alternative channels of communication exist. Indeed, as the Court of Appeals for the First Circuit most cogently noted in *Donnelly & Sons v. Campbell,* under billboard ordinances like the present one, *ideological* speakers — those whose message has long been afforded *maximum* protection under the First Amendment — are the ones most severely impacted, in terms of alternatives, by the statute. Such speakers are barred from using off-site billboard advertising, they cannot use on-site signs (whose content is restricted under the Salinas ordinance to essentially commercial speech), and they are the ones least likely to be able to afford such non-sign alternatives as television, radio, and newspapers. *See Donnelly & Sons v. Campbell,* Slip Op. at 25-27. For this very reason alone, the Court of Appeals for the First Circuit held Maine's anti-billboard statute unconstitutional. *Id.*

The vice of ordinances like the present one, which effectively eliminate all outdoor billboard advertising, is nowhere more apparent than in the political arena. While alternative communication media remain theoretically available after the total abolition of billboards (*i.e.*, other media exist), these anti-billboard ordinances can, *in fact,* impact the field of political expression and debate in a far more significant, and subtly invidious, way than many forms of more direct speech regulation. Thus, the nationwide "mainstream" party or candidate may be able to purchase network time at a cost of thousands of dollars per minute; but political views of candidates unsupported by wealth may be left to

the choice of inexpensive — and affordable — billboards or silence, thus unfairly skewing the entire democratic process against "the poorly financed causes of little people." *Metromedia,* 26 Cal.3d at 896 n. 3 (Clark, J., dissenting). The argument that expensive electronic media are "available" communication alternatives is not unlike Marie Antoinette's response on hearing that the poor had no bread. "Let them eat cake" was not a valid response then and it is not an answer here.

III.

THE POLICE POWER OF THE CITY OF SALINAS DOES NOT JUSTIFY THE COMPLETE DESTRUCTION OF THE OUTDOOR ADVERTISING BUSINESS WHERE LESS DRASTIC MEANS ARE AVAILABLE TO SERVE THE ASSERTED GOALS OF SAFETY AND AESTHETICS.

It is indeed true that the police power of the state is broad. *Goldblatt v. Town of Hempstead,* 369 U.S. 590 (1962); *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365 (1926). Where such power, however, is invoked to authorize the *complete destruction* of a legitimate business, the existence of which has also been an *essential* medium of communication for countless advertisers and other ideological speakers, the outer limits of that power are seriously strained. At the least, a law which has such an impact on constitutionally protected interests ought to be afforded judicial scrutiny that rises above mere rationality analysis. Such analysis, however, is precisely the kind of deferential treatment afforded the Salinas ordinance by the court of appeal below in assessing Appellant's due process challenge under the Fourteenth Amendment.

That such an approach was erroneous is made manifestly clear by the consistent declaration of this Court that a more exacting scrutiny of the legislative exercise of police power is required when competing constitutional values are im-

plicated. *See, e.g., Carey v. Population Services International,* 431 U.S. 678 (1977) (requiring more exacting scrutiny when right to privacy is implicated); *Erznoznik v. City of Jacksonville,* 422 U.S. 205 (1975) (requiring more exacting scrutiny when freedom of speech is implicated); *Shelton v. Tucker,* 364 U.S. 479 (1960) (more exacting scrutiny required when associational freedoms are implicated); *Cantwell v. Connecticut,* 310 U.S. 296 (1940) (more exacting scrutiny required when religious freedoms are implicated). In *Shelton v. Tucker,* the Court struck down a statute which compelled all public school teachers, as a condition of employment, to file an annual affidavit listing every organization to which they belonged or regularly contributed over the past five years. In doing so, it noted:

> "This Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties *when the end can be more narrowly achieved.* The breadth of legislative abridgement must be viewed in the light of *less drastic means* for achieving the same basic purpose." 364 U.S. at 488 (emphasis added).

As has been discussed above, the court of appeal below and the California Supreme Court in *Metromedia* refused to engage in *any* analysis of the means used to achieve the proferred legislative goals and gave no consideration to "less drastic means" available to the achievement of these goals. The reason for such reluctance is clear — the ordinances in each case manifestly will not withstand such analysis.

The broad brushstrokes of the ordinance herein belie any contention that its sign "regulations" reasonably and narrowly serve the goal of traffic safety. Billboards are not banned merely from hazardous locations; they are indis-

criminately banned from all areas, save the CG district, the *one* area where the traffic density and congestion (*see* Finding of Fact No. 15, Appendix B at 31a) might reasonably support a ban on distracting features of the landscape.

Again, as discussed previously, the invocation of "aesthetics" as justification for the elimination of outdoor advertising in the City of Salinas proves far too much. Indeed, the more grievous the burden on First and Fourteenth Amendment rights, the more perfect the nexus between the end ostensibly sought — landscape sans billboards — and the means employed. *See Donnelly & Sons v. Campbell*, No. 79-1575, Concurring Slip Op. at 13. Obviously, the protections of the First and Fourteenth Amendments were not intended to be so easily and completely circumvented.

It can be readily conceded that a different case would be presented were the legislative ban on billboards restricted to certain scenic sectors of the city or, more generally, to the non-commercial districts. *Cf. Thomas Cusack Co. v. Chicago*, 242 U.S. 526 (1916) (billboards may be prohibited in " residence districts"); *Modjeska Sign Studios, Inc. v. Berle*, 43 N.Y.2d 468, 473, 373 N.E.2d 255, 257, 402 N.Y.S.2d 359, 362 (1977) (billboards may be excluded to "ensure the natural beauty" of park areas), *appeal dismissed*, 439 U.S. 809 (1978). Such an ordinance might not vindicate as completely the legislative goal of "paradise restored"; but it would possess the virtue of permitting the co-existence of beauty and the billboard, of the public welfare and the private constitutional interests involved. *See Donnelly & Sons v. Campbell*, No. 79-1575, Concurring Slip Op. at 19.

IV.

EVEN IF THE ORDINANCE IS A VALID EXERCISE OF THE POLICE POWER, SALINAS MAY NOT USE THAT POWER, CONSISTENTLY WITH THE FIFTH AMENDMENT, TO COMPEL REMOVAL OF APPELLANT'S SIGNS WITHOUT JUST COMPENSATION.

The Fifth Amendment's guarantee that private property shall not be taken for public use, without just compensation, is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). Although no "set formula" has been developed for determining when regulation ends and taking begins, this Court has explicitly recognized, as factors of "particular significance," "the economic impact of the regulation on the claimant and, particularly, the *extent to which the regulation has interfered with district investment-backed expectations . . . .*" *Penn Central Transportation Company v. New York City*, 438 U.S. 104, 124 (1978).

In *Penn Central*, this Court cited the case of *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), for the proposition that "a state statute that substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a 'taking.' " 438 U.S. at 127. In *Pennsylvania Coal Co.*, the only interest that plaintiff had in certain properties was the right to remove the coal thereunder. A statute was subsequently passed that rendered the mining of the coal economically impracticable. 260 U.S. at 414. Because the statute "thus had nearly the same effect as the *complete destruction* of rights claimant had reserved from the owners of the surface land, the Court held that the statute was invalid as effecting a 'taking' without just compensation." *Penn Central*, 438 U.S. at 127-28

(discussing *Pennsylvania Coal Co.*, 260 U.S. at 414-15) (emphasis added) (citations omitted). *See also Armstrong v. United States*, 364 U.S. 40 (1960) (government's complete destruction of a materialman's lien on certain property held a "taking").

In identical fashion, the Salinas ordinance herein has effected the *complete destruction* of the rights of Appellant as sign owner and lessee of the underlying properties herein involved. These rights represent "distinct investment-backed expectations" of Appellant, for, unlike the asserted rights of the appellant in *Penn Central*, these rights correspond to *present* uses to which the property is put by Appellant. *See Penn Central*, 438 U.S. at 136. Nor do we have here the destruction of merely one "strand" of a full "bundle" of property rights possessed by Appellant; no alternatives exist for Appellant to derive an economic benefit from its fixed signs and leased properties. *Cf. Andrus v. Allard*, 444 U.S. 51 (1979) (prohibition on sale of Indian artifacts containing eagle feathers did not effect a taking where appellees retained the rights to possess and transport their property, and to donate or devise the protected birds).

This case is *unique* in that the actual dollar value of the business losses to Appellant was established by expert testimony at trial. As a consequence of this evidentiary record, this case is more appropriate for appellate resolution of the compensation/amortization issue. It presents a significant demonstrable loss suffered at the whim of government, a loss more clearly focused by a complete evidentiary record and for which amortization is not — and cannot be — an adequate substitute.

Conclusion.

The issue raised especially by this appeal, as distinguished from the *Metromedia* appeal, might read thus: If some accommodation of competing constitutional values must be

afforded by government in its use of the police power, what degree of accommodation is required? Does the Salinas ordinance, by virtue of the limited privileges it affords to billboard communication in certain limited sectors of the city, cause the law to be legitimate regulation of land use rather than illegitimate prohibition of speech and pursuit of a livelihood?

Appellant contends that the ostensible "accommodation" of billboards made by the Salinas ordinance merely obfuscates the actual design and effect of the ordinance — the destruction of advertising business in Salinas and the elimination of speech by sign.

> "If any one, consistent thread runs through First Amendment jurisprudence, surely it must be the recognition that the preservation of free expression is neither easy nor comfortable. It often requires of us that we tolerate things we would rather not see and endure things we would rather not hear. It requires that we accept a less than perfect world — a world that is not as quiet, (*see, e.g., Saia v. New York,* 334 U.S. at 561-62 (loudspeakers)), as neat (*e.g., Schneider v. New Jersey,* 308 U.S. at 162 (distribution of handbills)), as refined (*e.g., Carey v. Population Services International,* 431 U.S. at 700 (advertising and display of contraceptive devices); *Cohen v. California,* 403 U.S. at 24-25 (jacket inscribed with vulgar phrase)) or even, I believe, as scenic as we might like."
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> *Donnelly & Sons v. Campbell,* 79-1575, Concurring Slip Op. at 18.

The legislative attitude of the City of Salinas is presently one of intolerance for the medium of outdoor advertising, an attitude that permits no balancing of competing constitutional concerns. The questions presented by this appeal

are therefore substantial. Probable jurisdiction should be noted and the case set down for argument.

Respectfully submitted,

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Attorneys for Appellant.

APPENDIX

APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California First Appellate District, Division Three.

Not to be published in official reports.

Salinas, a municipal corporation, Plaintiff, Cross-Defendant and Respondent, vs. Ryan Outdoor Advertising, Inc., Defendant, Cross-Complainant and Appellant. 1 Civ. No. 43194 (Sup. Ct. No. 71306).

Filed December 2, 1980.

Ryan Outdoor Advertising, Inc. (hereafter Ryan or appellant), a Texas corporation, engaged in the outdoor sign advertising business in the City of Salinas (hereafter City or respondent) appeals a judgment enjoining its maintenance and ordering removal forthwith of "all of its off-site advertising signs and structures present at those locations specified in Exhibit A of the Complaint on file herein."

The City sought a mandatory injunction to compel Ryan to comply with City's ordinance No. 1103 (N.C.S.), a comprehensive land use zoning ordinance based on the general plan for the City and enacted in order to promote the public health, safety, morals, comfort and general welfare of its citizens.[1]

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[1]Salinas ordinance No. 1103 (N.C.S.) was adopted March 5, 1962, and became effective April 5, 1962, and although amended since, its basic provisions have remained in effect.

Ordinance No. 1103 (N.C.S.) permits off-site signs and billboards only in the general commercial (CG) zoning districts and, upon obtaining a use permit therefor, in the Unclassified (U) zoning districts; off-site signs and billboards located in other zoning districts are declared to be nonconforming uses and public nuisances, and their removal is required within five years of the effective date of the ordinance.

Ordinance No. 1488 (N.C.S.), adopted on August 16, 1971, amended ordinance No. 1103 (N.C.S.) and defined the term of "off-site" sign to mean a sign whose sponsor does not maintain offices and/or provide

(footnote continued on following page)

Ryan maintained off-site outdoor advertising signs at 44 locations throughout the City. The structures, which require a capital investment of $3,500 to $5,000 are placed on land leased from private owners for periods of 10 to 15 years. Nineteen of appellant's structures were nonconforming at the time of trial because they were not in general commercial districts. Nine are in the "Santa Rita" area, annexed by the City in 1974, and became nonconforming in 1979 when the five-year amortization period had run. The remaining 16 structures are within the general commercial districts, but they exceed the 22-foot height limit. These structures were not, however, a subject of the City's complaint filed in 1974.

As aforestated (see fn. 1), the City's ordinance No. 1103 (N.C.S.) permits off-site signs only in general commercial zoning districts, and, with a permit, in the unclassified zones, and all off-site signs and billboards in other zones are declared nonconforming uses and public nuisances, and their removal is required within five years.[2] Ordinance No.

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services at the site of the sign; ordinance No. 1488 (N.C.S.) reaffirmed the basic provisions of ordinance No. 1103 (N.C.S.) and continued the prohibition against off-site signs in the zone districts in which Ryan signs, as shown in Exhibit A of the complaint, are located, and continued the five-year amortization period with the further provision that all nonconforming signs then already fully amortized should be removed forthwith and should not receive the benefit of a new amortization period.

Additional sign regulations of the City prescribe that no sign may be located within 500 feet of the outer limits of the right-of-way of any freeway, except signs authorized by federal, state, county or city law (ordinance Nos. 1020(NC.S.) and 1068 (N.C.S.)); and no off-site sign may exceed 22 feet in height (ordinance No. 1488 (N.C.S.)).

[2]The trial court's findings of fact, 11 through 15 are as follows: "11. The sign shown in Exhibit A of the Complaint as located at Sanborn Road South and Pellet, Assessor's Parcel No. 3-561-13, was removed by Ryan prior to trial of this action.

"12. The population of Salinas is now 74,000 and in 1962 was 40,000.

(footnote continued on following page)

1103 (N.C.S.) does not provide compensation for removal of any outdoor advertising sign, or any other structure maintained in violation of its provisions. Although Ryan purchased the sign structures (Exhibit A) at issue in 1965, at least three years after they had been declared nonconforming, appellant cross-complained, seeking a judgment that the ordinance was unconstitutional on its face and as applied to its property, and an injunction restraining the enforcement of the ordinance. Alternatively, Ryan sought damages for the total abolition of its outdoor advertising business in City.

The trial court concluded that ordinance No. 1103 (N.C.S.) is a valid exercise of the police power in promoting traffic safety and enhancing community aesthetic values; that Ryan's signs at issue (Exhibit A) are public nuisances as a matter of law; that the ordinance's five-year amorti-

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"13. The City contains approximately 9237 acres of land and is divided into the following zoning districts (containing the following number of acres and percentages of land):

Acres	Zone		Percentage
964	"U"	Unclassified	10%
944	"A"	Agriculture	10%
900	"C"	Commercial (other than CG)	10%
274	"CG"	General Commercial	3%
1077	"M"	Manufacturing	19%
4380	"R"	Residential	47.4%

The General Commercial (CG) zoning districts comprise 3% of the City's total area, and 6% of the City's non-residential area.

"14. The U.S. 101 Freeway runs through the heart of the City of Salinas for approximately 6 miles; substantial areas of General Commercial (CG) and Unclassified (U) zoning districts border the freeway. (Plaintiff's Exhibit 6)

"15. General Commercial (CG) zoning districts are located substantially near the core of the City and border the following major streets in the City (which are heavily traveled):
(Plaintiff's Exhibit 6).

Street Name	Approximate Length (Combining Both Sides of Street)
Market Street	2 miles
Abbott Street	2¾ miles
East Alisal Street	¾ mile
North Main Street	¼ mile
John Street	¼ mile"

zation period is a reasonable exercise of the police power, and therefore appellant is not entitled to compensation for any damages sustained from removing its off-site advertising signs.

The trial court's decision, dated July 11, 1977, was, of course, reached before our Supreme Court decided the landmark case, *Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, modified 27 Cal.3d 144d. *Metromedia, Inc.*, is controlling and compels the result we reach herein. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) In *Metromedia, Inc.*, the Supreme Court concluded "that neither the federal nor the state Constitution bars a municipality from enacting a zoning ordinance which prohibits offsite billboards and requires removal of existing billboards after expiration of a reasonable amortization period. The Outdoor Advertising Act [Bus. & Prof. Code, § 5200 et seq.], however, preempts local law to bar the uncompensated removal of existing billboards located within 660 feet of federal interstate or primary highways." (At p. 885.)

The Supreme Court rejected the superior court's conclusion that the City of San Diego's ordinance exceeded the city's authority under the police power and reversed the judgment, enjoining enforcement of the ordinance. Upon remand, the trial court was directed to "determine which if any of plaintiffs' billboards fall within the preemptive scope of the Outdoor Advertising Act and render judgment that the ordinance may not be validly applied to require uncompensated removal of such billboards." (*Metromedia, Inc., supra,* at p. 855.)

In the case at bench, the trial court concluded that the California Outdoor Advertising Act, designed to comply with the provisions of the federal Highway Beautification Act of 1965 (23 U.S.C., § 131(g)), "has not, by its very

terms, preempted the field of regulation of outdoor advertising." Of course, the trial court reached its conclusion on July 11, 1977, before the enactment of the November 1978 amendment (92 Stat., §§ 2700-2701) to the Highway Beautification Act of 1965 (23 U.S.C., § 131). Our Supreme Court in *Metromedia, Inc., supra,* at page 878, "reluctantly" concluded that it believed that the Highway Beautification Act, as amended in 1978, requires the payment of compensation for removal of all billboards existing or subject to litigation on November 6, 1978, located within 660 feet of federal, interstate or primary highways within San Diego and visible from the main traveled way of such highways.

Manifestly we are required to reach the same conclusion herein as regards the City. Consequently at oral argument counsel for the respective parties, at our request, agreed to inform this court which of Ryan's outdoor advertising signs in the City are covered by the federal Highway Beautification Act. Initially the parties agreed that the following signs were located within 660 feet of United States Highway 101 and visible from the nearest edge thereof:

No.	Location	Landowner	Description	Zone
A-18	U.S. 101 WL ¼ mile south of Airport Blvd. crossing	McCormick & Co., Inc.	Three structures: Bulletin 12 x 40 BB Bulletins 12 x 40	ML
A-15	S.E. Corner John and Work Streets	Louis Ottone	BB Posters	M-G
A-16	U.S. 101 East line (south of 1511 Abbott Street)	Southern Pacific	Two Posters V-build	M-G

On August 20, 1980, counsel for appellant, and on August 15, counsel for City, advised this court by letters of their agreement that three structures or signs designated "A-18"

(located on the McCormick & Co., Inc. property at U.S. 101 WL, one-quarter mile south of Airport Boulevard crossing) ceased to exist. Their removal was not due to any action on the part of the City. Apparently removal occurred as a consequence of termination of the leasing agreement pertaining to sign "A-18." Presently remaining then within the purview of the federal Highway Beautification Act and affected by the judgment under review are sign locations "A-15" and "A-16."[3]

As regards the sign "A-16," listed and described above, we were advised by appellant's counsel that the structures are so placed (within 660 feet of U.S. 101) "that the copy is visible from Abbott Street and not the freeway. The structures themselves, are visible from U.S. 101 (which the City admits) and if the structures were turned around and angled properly the copy could be viewed from U.S. 101." We agree with appellant's contention and not the City's that sign "A-16" is not exempt from application of the Highway Beautification Act. Our view simply stated is that in terms of aesthetics, as a legitimate exercise of the police power, no sound reason suggests itself for differentiating between the sign message and the structure from which it is displayed.

In summary, we hold in accordance with the dictates of *Metromedia, Inc. v. City of San Diego, supra,* 26 Cal.3d 848, that the judgment is affirmed insofar as it enjoins Ryan from maintaining all of its off-site advertising signs specified in Exhibit "A" of City's complaint and orders their removal forthwith; but reverse the judgment as regards signs "A-15" and "A-16" hereinabove described. We hold that ap-

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[3]We are informed that there are also series "B" and "C" signs located within 660 feet of the right-of-way of U.S. 101. However, the City did not include them in its complaint; consequently, they are not part of the judgment.

pellant is entitled to just compensation upon removal of aforesaid signs "A-15" and "A-16."

Below we briefly discuss the major points raised in this appeal, each of which was also raised and determined in *Metromedia, Inc.*

1. Police Power.

Appellant argues that the subject ordinance exceeds the permissible limits of the city's authority under its police power and constitutes a "taking" without compensation in violation of the Fifth Amendment. The court rejected a similar argument in *Metromedia, Inc.*

In *Metromedia, Inc.*, as here, the purpose of the disputed ordinance was to eliminate traffic hazards and to improve the appearance of the city. In the instant case, although the recited purpose of the ordinance was more generally stated to be the promotion of ". . . public health, safety, morals, comfort and general welfare throughout the city . . . ." (§ 37-1 of Municipal Code), the trial court found, and appellant does not dispute, that the promotion of traffic safety and the enhancement of community aesthetic values were among the reasons which prompted the adoption of the ordinance. Therefore, the holding of the *Metromedia, Inc.* court is directly applicable to the instant case.

Metromedia, Inc. held that an ordinance whose objectives include the promotion of traffic safety and the enhancement of community aesthetic values represents a proper application of municipal authority over zoning and land use for the purpose of promoting the public safety and welfare. (*Metromedia, Inc. v. City of San Diego, supra,* 26 Cal.3d 848, 860.) The court considered the argument that the city had failed to prove the elimination of billboards was reasonably related to traffic safety. It was found irrelevant on the ground that the plaintiffs there had the burden of proof

and that the legislative determination, unless manifestly unreasonable, could not be disturbed. The court went on to hold as a matter of law that an ordinance which eliminates billboards designed to be viewed from streets and highways reasonably relates to traffic safety.

Expressly overruling *Varney & Green v. Williams* (1909) 155 Cal. 318, the court also held that aesthetic objectives alone are sufficient to justify an exercise of the police power. *Varney & Green*, which had held that such considerations were not sufficient to justify an exercise of the police power, was rejected as unworkable and discordant with modern thought as to the scope of the police power. On this point the court quoted Justice Douglas in *Berman v. Parker* (1954) 348 U.S. 26, 33: " 'The concept of the public welfare is broad and inclusive. [Citation.] The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the Legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.' " (*Metromedia, Inc., supra*, at p. 861.)

It is clear that under *Metromedia, Inc.*, City's ordinance regulating the placement and size of billboards is a permissible exercise of the police power. Although appellant attacks the selection of the general commercial area, 3 percent of the City's area, as arbitrary, arguing that billboards should also be allowed in the other commercial and in the manufacturing districts, the legislative determination cannot be disturbed without a showing that it is manifestly unreasonable. (*Metromedia, Inc. v. City of San Diego, supra*, 26 Cal.3d 848, 863.) There has been no such showing. It can readily be imagined that the City legislators considered the fact that off-site billboards in a high density commercial area would not create or escalate traffic or aesthetic conditions greater than those already occasioned by the plethora

of on-site signs and billboards which would certainly be present. In lower density commercial districts, on the other hand, such as administrative and professional office districts, or local shopping districts, or in manufacturing districts, the prohibition would have an effect. It is not just rural, residential and suburban districts which are entitled to the benefit of aesthetically pleasing environments. (*Metromedia, Inc., supra,* at p. 865.)

Appellant argues that the effective destruction of its business is a taking, not a regulation. However, California cases have firmly declared that zoning legislation may validly provide for the eventual termination of nonconforming uses without compensation if it provides a reasonable amortization period commensurate with the investment involved. This is so even where the regulation amounts to a total prohibition. " 'It is within the police power of the city wholly to exclude a particular use if there is a rational basis for the exclusion. . . . [T]he person whose business plans are frustrated is not entitled to have his interest weighed more heavily than the predominant interest of others in the community.' " (*Metromedia, Inc., supra,* at p. 864, quoting *Oregon City v. Hartke* (1965) 240 Ore. 35, 49-50.)

The determination of what is a reasonable amortization period involves a process of weighing the public gain to be derived from a speedy removal of the nonconforming use against the private loss which removal of the use would entail. *Metromedia, Inc., supra,* at pp. 882-883.)

Ordinance No. 1103 (N.C.S.), enacted in 1962, provided a five-year amortization period. The 1971 ordinance, No. 1488 (N.C.S.), which reaffirmed the basic provisions of ordinance No. 1103 (N.S.C.) and added the 22-foot height limitation for all signs and billboards within the general commercial zone, continued the five-year amortization period with the provision that all nonconforming signs already

fully amortized should be removed forthwith without the benefit of a new amortization period. As of the date of the proceeding in the trial court, Ryan had had 15 years to recoup its investment in the 19 structures which were ordered removed. The structures within the general commercial district which exceed the height limitation were not a subject of Salinas' complaint

A one-year amortization period is generally unreasonable. An amortization period of five years, as provided by the instant ordinance, is not unreasonable on its face. Whether the period is valid as applied to each of Ryan's signs depends upon facts peculiar to that structure, and the burden of proving the invalidity of the amortization period as applied to each structure is on Ryan. The cost, depreciated value, remaining useful life, length and remaining term of the lease under which it is maintained, and the harm to the public if the structure remains standing beyond the prescribed amortization period are factors to consider. *Metromedia, Inc. v. City of San Diego, supra,* at pp. 883-884.) In the trial court Ryan made no attempt to meet its burden by presenting evidence of the relevant considerations as to each structure. Its argument was limited to the claim that all of the signs and billboards in question were still income producing and still of value regardless of their age, and that their removal would in itself cost substantial amounts of money and would have a deleterious effect on their business as a whole. In effect, Ryan's attack was confined to the unconstitutionality of the ordinance.

Because Ryan failed to show that the amortization period as applied was invalid, the trial court's finding that the investment in the signs and billboards had been recouped during the 15-year period, and therefore that the ordinance as applied to Ryan's billboards was reasonable cannot be overturned on appeal on "constitutional" grounds.

2. First Amendment.

Appellant argues that First Amendment protection of outdoor advertising is an idea whose time has come. The Supreme Court squarely rejected this contention in *Metromedia, Inc.*, where San Diego banned *all* outdoor off-site advertising. The court stated that the First Amendment contention was an arguable issue when first presented. Howwever, during the pendency of the action the United States Supreme Court dismissed the appeal in *Suffolk Outdoor Advertising Co. v. Hulse* (1977) 43 N.Y.2d 483, for want of a substantial federal question. Being a decision on the merits, it resolved that a prohibition of off-site billboards inconsistent with ordinances prohibiting off-site billboards did not violate the First Amendment. (*Hicks v. Miranda* (1975) 422 U.S. 332.)

The court reached a similar conclusion under the free speech clause of the California Constitution, drawing on the reasoning of *John Donnelly & Sons v. Mallar* (D.Me. 1978) 453 F. Supp. 1272. That opinion held that an ordinance which regulates commercial speech will pass constitutional muster as a lawful regulation of the time, place, and manner of speech if it satisfies three criteria: "... (1) the restriction on speech must be 'justified without reference to the content of the regulated speech,' (2) the restriction must 'serve a significant governmental interest,' and (3) in so doing, the restriction must 'leave open ample alternative channels for communication of the information.' " (*John Donnelly & Sons v. Mallar, supra,* at p. 1277.)

Here, as in *Metromedia, Inc.*, the challenged ordinance complies with the three requirements.

There is no and can be no contention that the ordinance is directed to the content of the advertiser's message. The Supreme Court decisions on which appellant relies struck down laws aimed at the suppression of a particular message

based on the content of that message. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* (1976) 425 U.S. 748, invalidated a law banning advertisement of drug prices; *Linmark Associates, Inc. v. Township of Willingboro* (1977) 431 U.S. 85, invalidated an ordinance banning residential "for sale" and "sold" signs. The subject ordinance, in contrast, was not, in the words of the *Metromedia, Inc.* court, "enacted to prevent an advertiser from communicating his message to the public, but only to bar him from using a particularly unsightly and intrusive mode of communication." (*Metromedia, Inc., supra,* at p. 868.)

Ryan also relies upon *Baldwin v. Redwood City* (9th Cir. 1976) 540 F.2d 1360, certiorari denied 431 U.S. 913. There an ordinance which severely restricted the time, place, manner, *and* content of temporary signs, predominantly political, was struck down as unconstitutional. The instant case is distinguishable. Here as in *Metromedia, Inc.*, the ordinance at issue bans permanent structures used predominantly for commercial purposes.

Although, unlike the San Diego ordinance, the City ordinance does not include an exception for temporary political signs and may be vulnerable to attack on that ground, Ryan, as the owner of permanent structures, who would not be affected by such an exception one way or the other, has no standing to make such an attack (see *Metromedia, Inc., supra,* at p. 869, fn. 14). The issue is therefore not before this court.[4]

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[4]The San Diego ordinance has limited exceptions: "Signs maintained in the discharge of a governmental function; bench advertising signs; commemorative plaques, religious symbols, holiday decorations and similar such signs; signs located within shopping malls not visible from any point on the boundary of the premises; signs designating premises for sale, rent or lease; public service signs depicting time, temperature or news; signs on vehicles conforming to city regulations; and temporary off-premises subdivision directional signs.

(footnote continued on following page)

3. Compliance with Federal Highway Beautification Act.

In *Metromedia, Inc., supra,* the Supreme Court discussed at length the question of whether municipal ordinances requiring, without compensation, removal of billboards within 660 feet of federal interstate and primary highways are preempted by the Outdoor Advertising Act (Bus. & Prof. Code, § 5200 et seq.).

In concluding that the Act does partially preempt municipal authority, the Supreme Court found the intent of the Legislature as expressed in section 5412 of the Act to require "payment of compensation only when such payment is necessary to comply with *federal law.*" (*Metromedia, Inc., supra,* at p. 873.) Thereafter the court reviewed the provisions of the relevant federal statute, the Highway Beautification Act of 1965 (23 U.S.C., § 131), as amended in November of 1978. (See Stat., §§ 2700-2701.) The court noted that subsection (b) of the Highway Beautification Act provides for a 10 percent cut in federal aid highway funds to any state which fails to provide effective outdoor advertising signs and displays "visible from" and "within six hundred and sixty feet of the nearest edge of the right-of-way" of the Interstate System and the primary system of federal highways. Under subsection (c), "effective control" requires, with certain exceptions not relevant herein, removal of *all* said signs within 660 feet to the nearest edge of the right-of-way. However, subsection (d) permits a state per agreement with the Secretary of Transportation to have

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"As originally enacted, the ordinance contained no exception for political signs. On October 19, 1977, the city council amended the ordinance to permit 'Temporary political campaign signs, including their supporting structures, which are erected or maintained for no longer than 90 days and which are removed within 10 days after the election to which they pertain.' (Ord. No. 12189 (New Series).)" (*Metromedia, Inc., supra,* at p. 856, fn. 1.)

The City ordinance has similar exceptions, but does not have a provision allowing temporary political signs.

signs consistent with customary usage in commercial and industrial areas which otherwise would be prohibited by subsection (c). (See *Metromedia, Inc., supra,* at pp. 873-875.)

California's agreement, entered into in 1968 with the Secretary of Transportation reserved to the state or any subdivision of the state the right to exercise a greater degree of control, including more restrictive standards over outdoor advertising signs. Consequently the *Metromedia Inc.* court concluded that San Diego's 1972 ordinance prohibiting off-site commercial billboards in its commercial or industrial zones was a legitimate exercise of its police power, the state having elected *not* to protect such "customary usage" billboards under a subsection (d) agreement. (*Metromedia, Inc., supra,* at p. 876.)

Finally, the *Metromedia, Inc.* court considered at length the language of subsection (g), as amended in 1978, of the Highway Beautification Act and *reluctantly* concluded that the literal language of the federal act compels compensation upon removal of any billboard not permitted under subsection (c). Subsection (g), as amended in 1978, provides that "Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section."

The balance of subsection (g) specifies that 75 percent shall be the federal share of such compensation and specifies the interests that are compensable. The Supreme Court concluded that local removal of billboards without compensation, even though undertaken to promote public safety and preserve natural beauty, would imperil the state's receipt of federal highway funds. (See *Metromedia, Inc., supra,* at pp. 876-879.)

The Supreme Court's *reluctance* is founded in its observation that the 1978 amendments have in effect subordinated the primary goal of encouraging billboard removal to the secondary goal of insuring compensation.

Further, *Metromedia, Inc.'s* determination as to the effect of the 1978 amendments, in accord with the position taken by the Federal Highway Administration, requires compensation for " 'signs still in existence on November 6, 1978, and those additional signs which were removed prior to November 6, 1978, but were the subject of litigation pending on that date.' " (*Metromedia, Inc., supra,* at p. 878.) In the instant case, at time of judgment, appellant owned three compensable sign locations but as heretofore explained only two remain, A-15 and A-16. Since A-18's removal did not result from the City's actions, we reverse the judgment as to A-15 and A-16 for the reason that Ryan is entitled to compensation for removal of these signs as required under the Highway Beautification Act (23 U.S.C., § 131). In accord with *Metromedia, Inc.,* we hold that respondent's ordinance No. 1103 (N.C.S.), as amended in ordinance Nos. 1488 (N.C.S.), 1020 (N.C.S.) and 1068 (N.C.S.), is partially preempted by the Outdoor Advertising Act (Bus. & Prof. Code, § 5200 et seq.) and to that extent invalid.

As regards all remaining Exhibit A signs decreed by the mandatory injunction, the judgment is affirmed.[5]

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[5]*Metromedia, Inc., supra,* at page 880, compels the result that as to billboards not protected by federal law — that is, to billboards more than 660 feet from federal interstate or primary highways, respondent's ordinances at issue are not preempted by the Outdoor Advertising Act.

Further, the City ordinance does not deny Ryan the equal protection of the law. As is stated in *Metromedia, Inc., supra,* at page 881, after pointing out that distinctions involved in purely economic regulation may be sustained if the classification bears a rational relationship to a legitimate state purpose: It stated that, "California decisions establish that a city seeking to eliminate nonconforming uses may pursue two constitutionally equivalent alternatives: It can eliminate the use im-

(footnote continued on following page)

White, P. J.

Scott, J.

Feinberg, J.

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mediately by payment of just compensation, or it can require removal of the use without compensation following a reasonable amortization period. (See *Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal.2d 121, 127 . . .) The choice between the alternatives largely involves budgetary considerations. The state has chosen to require compensation when the funds for such purpose are augmented by a 75 percent federal contribution. When such federal funds are not available, the state has not required compensation, and the city has accordingly chosen the more economical alternative of requiring abatement after expiration of an amortization period. We find no denial of equal protection in that decision. (See *Ackerley Communications, Inc. v. City of Seattle, supra,* 602 P.2d 1177, 1187.)"

The Supreme Court of the United States granted a hearing in *Metromedia, Inc. v. City of San Diego, supra,* 26 Cal.3d 848, modified 27 Cal.3d 144d. By letter dated October 24, 1980, counsel for appellant suggested that we vacate the submission of this appeal pending decision of the Supreme Court of the United States. Obviously we have declined the request; this appeal was initially calendared for oral argument and decision in March 1979.

APPENDIX B.

Intended Decision and Memorandum of Decision of the Superior Court.

Superior Court of the State of California for the County of Monterey.

Salinas, a Municipal Corporation, Plaintiff and Cross-Defendant, vs. Ryan Outdoor Advertising, Inc., Defendant and Cross-Complainant. Case No. 71306.

Filed May 11, 1977.

The above entitled matter was tried before the court sitting without a jury on March 22-24, 1977, and submitted for decision, and the court, having heard and considered the evidence, both oral and documentary, having read the trial briefs and heard the arguments of counsel, now renders its Intended Decision as follows:

This is an action by the City of Salinas seeking Judgment for the removal of 19 of 44 off-site outdoor advertising signs maintained by Ryan Outdoor Advertising in various locations within the City. Ryan has cross-complained alleging that City ordinances relied on by the City are arbitrary, unreasonable and unconstitutional.

Salinas adopted a comprehensive zoning ordinance on March 5, 1962 (Ord. No. 1103). The Ordinance was adopted "as a precise and detailed plan for the use of land . . . based on the General Plan for the City . . . and enacted in order to promote the public health, safety, morals, comfort and general welfare throughout said City . . ." (*Sec. 10,500, Ord. No. 1103*).

Under the Ordinance, off-site signs and billboards are permitted only in the General Commercial (CG) zoning districts. Off-site signs existing in other than "CG" districts are declared to be nonconforming uses, nuisances, and were to be removed within five years (*Sec. 10,727, Ord. No.*

1103). The 19 signs in question are located in other than the permitted districts but have not been removed, ten years after lapse of the five year removal period.

A purpose of "CG" zoning districts is to provide a location for the wholesale and heavy commercial uses and services necessary within the City and not suited to other commercial districts (*Sec. 10,690, Ord. No. 1103*).

The signs in question were legally placed prior to adoption of the Ordinance in 1962. The Ordinance has been amended since 1962, but the basic provisions which applied in 1962 remain.

Additional off-site sign restrictions should be noted. No off-site sign may be located within 500 feet of the outer limits of the right-of-way of any freeway except signs authorized by Federal, State, County or City law (*Ord. No. 1020 and 1068*). No off-site sign may exceed 22 feet in height (*Ord. No. 1488*).

It appears that some portions of the "CG" districts in existence in 1962 were re-classified into an "M" district (*Ord. No. 1406, adopted 1969*) and into the "CB-1" district (*Ord. No. 1572, adopted 1974*). It does not appear, however, that any of Ryan's signs were directly affected by these reclassifications. Central Business (CB) zoning districts were established in 1974 to revitalize the Central Business area.

The population of Salinas is now approximately 74,000 and in 1962 was approximately 40,000. The City contains 9237 acres which are divided into the following zoning districts.

ACRES	ZONE		
964	"U"	Unclassified	10%
944	"A"	Agriculture	10%
900	"C"	Commercial (other than CG)	10%
274	"CG"	General Commercial	3%
1077	"M"	Manufacturing	19%
4380	"R"	Residential	47.4%

Off-site signs may be located in "U" zoning districts provided a use permit is obtained (*Sec. 10,718, Ord. No. 1103*). Substantial areas of "U" districts border the freeway (see Plaintiff's Exhibit No. 6).

Ryan also owns 9 off-site signs in the Santa Rita area which the City annexed in 1974. These signs are not within a "CG" district but by virtue of the five year delay period are not due for removal until 1979.

A freeway (U.S. 101) passes through the heart of Salinas for approximately six miles. A "CG" district borders a ¾ mile segment of this freeway on the west and a ¼ mile segment on the east. An approximate 3 mile stretch of the freeway borders residential and agricultural districts.

"CG" districts in which signs are permitted, also border the following major streets in the City:

STREET NAME	APPROXIMATE LENGTH (COMBINING BOTH SIDES OF STREET)
Market Street	2 miles
Abbott Street	2¾ miles
East Alisal Street	¾ mile
North Main Street	¼ mile
John Street	¼ mile

The "CG" districts are located substantially near the core of the City (*see Plaintiff Exhibit No. 6*).

Salinas has a strong economic industrial and agricultural base and is basically self contained in the sense that the majority of the work force resides in the city.

Defendant Ryan contends that the City of Salinas is a key part of its advertising sign business in the local "Salinas Market" area which includes Gonzales, Seaside, Marina, Castroville, Prunedale and Hollister; that elimination of the 19 sings in question would render its advertising product unmarketable because there would be a lack of adequate distribution and coverage of the viewing public; and that

reasonableness requires the allowance of off-site signs in at least the "CC", "CI", "ML" and "MG" districts in addition to the "CG" districts. It is noted that when the basic provisions of the questioned 1962 Ordinance were reaffirmed in a 1971 amendment, (*Ord. No. 1488*), a Ryan representative participated as a City Council Sign Study Committee member dealing with off and on-site signing. Ryan's representative then advised the City that the proposed Ordinance was "reasonable regulation of off-site advertising" (*Plaintiff's Exhibit No. 7*), and supported adoption of the Ordinance at the City Council's public hearing although he was not in complete agreement with all its provisions (*Plaintiff's Exhibit No. 28*).

Ryan further claims that removal of non-conforming signs in five years does not permit full amortization, would result in substantial financial loss, and that fifteen to twenty years would be a more reasonable amortization period.

The issues presented are as follows:

1. Is the City Ordinance a valid exercise of the police power?

2. Is the five year removal provision reasonable?

3. Does the Ordinance violate the Constitutional guarantees of freedom of speech?

4. Does State law pre-empt the field of off-site sign regulation? Is Defendant entitled to damages?

POLICE POWER

The primary question is whether the Ordinance reasonably tends to promote the public health, safety, morals or general welfare. In *National Advertising Co. v. County of Monterey*, 211 C.A.2d 375, 377-378, the Court stated:

> "Whether the regulation is arbitrary or unreasonable must be determined under the established rules governing judicial review of exercises of the police power.

> That power is elastic, and capable of expansion to meet existing conditions of modern life. (Consolidated Rock Products Co. v. City of Los Angeles, 57 Cal 2d 515, 522. . .'' [D]etermination of the necessity and form of such regulations. . . is primarily a legislative and not a judicial function'' (id. 522). If the necessity or propriety of a zoning regulation is a question upon which reasonable minds might differ or is fairly debatable, the legislative determination will not be disturbed.''

The bases and justification for regulation of billboards under the police power are well recognized. The promotion of traffic safety and the enhancement of community aesthetic values are among the valid and acceptable reasons for regulation and prohibition of off-site signs in certain locations. It may logically be assumed that such reasons prompted adoption of the Ordinances in question. (*City of Escondido v. Desert Outdoor Advertising, Inc.*, 8 C.3d 785; *Metromedia, Inc. v. City of Pasadena*, 216 CA2d 281; *National Advertising Co. v. County of Monterey*, 211 CA 2d 375.)

Defendant, relying on *Metromedia, Inc. v. City of San Diego*, 67 CA 3d 84, contends that the scheme of the Salinas City Ordinances constitute a virtual total ban of off-site signs and is therefore an unreasonable and arbitrary exercise of the police power. Defendant urges consideration of the facts that sign heights are limited to 22 feet, that signs are not permitted within 500 feet of the freeway and that ''CG'' districts comprise only 3% of the City's total area.

The twenty-two foot height restriction is not patently unreasonable and has the legitimate object of balancing necessary visibility against unnecessary prominance. The purpose of the 500 foot freeway regulation is set forth in Ordinance No. 1020 (see Defendant's Exhibit No. 2) and appears legitimate. There is no evidence that the ''CG''

districts adjacent to the freeway will not accomodate reasonably visible signs even given the 500 foot distance and twenty-two foot height restrictions.

Finally, while the "CG" districts comprise 3% of the City's total area, they also comprise 6% of the non-residential districts. Of significance also is the fact that the "CG" districts encompass the freeway, Market Street, Abbott Street, John Street, Alisal Street and North Main which are among the most heavily traveled in the City.

It cannot of course be proclaimed that lease sites for the placement of off-site signs will exist in these districts in abundance or that such districts contain the optimum or even prime locations for such signs. It is recognized that sign placement, from an advertising sales standpoint, is a sophisticated enterprise and that restricting sign companies such as Ryan to certain districts may not guarantee the most profitable venture. But such speculation is not grounds for declaring the Ordinance invalid (*Metromedia, Inc. v. City of Pasadena,* 216 CA 2d supra at page 274).

The case of *Metromedia, Inc. v. San Diego,* supra, is factually different. There a large metropolitan city ordered removal of all off-site signs. While declaring that Ordinance unreasonable as too broad, the court impliedly approved the prohibition of signs in certain zones or areas of a city (*supra at page 98*).

While it may reasonably be argued, as Defendant has that off-site signs would present no detriment if allowed in other commercial and business areas of the City, the issue is certainly debatable from a safety, aesthetic and economic standpoint. In this posture the decision of the City Council should not be disturbed.

Appendix B — Intended Decision and Memorandum of Decision of the Superior Court

THE FIVE YEAR REMOVAL PERIOD AND DAMAGES.

Ordinance No. 1103, Sec. 10,811 declares the maintenance of a non-conforming structure on land to be unlawful and a public nuisance. The 19 signs in question are non-conforming uses. Under these circumstances no triable issue of fact is presented. The signs are public nuisances as a matter of law (*People Ex.Rel, Department of Public Works v. Adco Advertisers,* 35 CA3d 507, 511).

"Subject to Constitutional barriers against unreasonable or arbitrary action, the Legislature may declare a pre-existing use to be a public nuisance and may forbid it without providing an amortization period [citations]" *People Ex. Rel, Department of Public Works v. Adco Advertisers,* supra p. 513).

Defendant in the instant case has had fifteen years to remove the signs subject to this action. It can hardly now complain that five years is not sufficient time to recoup its investment in these signs. Further, in *People Ex. Rel, Department of Public Works v. Adco Advertisers,* supra, the court upheld an amortization period of two years and eight months against evidence that the sign in that case would not be fully amortized for over five years from the date of Judgment.

Finally, as expressed in *Metromedia, Inc. v. San Diego,* 67 CA3d 84, 95:

> "The legitimate exercise of the police power does not run afoul of due process, and the fact that an individual or his business or property, may sustain damage as the result of its proper exercise to protect the health, safety, morals and general welfare of the community does not entitle him to compensation."

Appendix B — Intended Decision and Memorandum of Decision of the Superior Court

THE CONSTITUTIONAL GUARANTEE OF FREE SPEECH.

Outdoor off-site advertising is a medium which acts as a conduit for messages of a political, social and commercial nature. Speech, even of a purely commercial nature, is protected by the First Amendment. *Virginia Pharmacy Board v. Virginia Consumer Council,* 48 L.Ed. 2d 346 (1976); *Weldon v. City of Los Angeles,* 18 Cal.3d 497. Generally, "While it is settled that government may reasonably regulate the time, place and manner of exercising First Amendment rights, the regulation must be written narrowly and explicitly, in furtherance of a legitimate police power purpose" (*Weldon v. City of Los Angeles,* supra at page 504).

In *Virginia Pharmacy Board v. Virginia Consumer Council, supra,* the United States Supreme Court held unequivocably and as a substantially new proposition that commercial messages were as protected as idological speech. The court's holding struck down a Virginia law which totally prohibited advertsement of prescription drug prices by pharmacists. It is important to note, however, that the Supreme Court did not consider the Virginia law to be a mere time, place and manner restriction. The court stated that:

> "In concluding that commercial speech, like other varieties, is protected, we of course do not hold that it can never be regulated in any way. Some forms of commercial speech regulation are surely permissible (supra, 48 L.Ed 2d at page 363).
>
> * * * * * * * * * * * *
>
> "We have often approved restrictions of that kind provided that they are justified withou reference to the content of the regulated speech, that they serve a significant governmental interest, and that in so doing

> they leave open ample alternative channels for communication of the information."

The manner and means used in the conveyance of messages are factors to be considered in determining whether free speech is improperly restrained (*Kovaks v. Cooper,* 336 U.S. 77, 93 L.Ed. 529).

Outdoor Advertising signs are large permanent fixtures skillfully prepared to attract attention. Unlike radio, television and newspaper they cannot be turned off or set aside. They work day and night before captive audiences, and they can significantly affect a city's appearance and the peace and safety of its citizens. The difference in the very nature of outdoor signs justifies their separate classification in the field of advertising (*Packer Corporation v. Utah,* 285 U.S. 105, 76 L.Ed. 643, 647).

The restriction here in question does not purport to control the content of any message. The regulation deals principally with the places at which but one of a variety of advertising methods may be carried on. Those who might otherwise buy Ryan's Advertising sign space are not foreclosed from other avenues of expression.

It is therefore concluded that the protection of the interests of the citizens of the City in their environment, peace and safety justified the ordinance's partial restriction on off-site advertising, and that such restriction is not an unlawful restraint of freedom of speech.

STATE PRE-EMPTION OF OUTDOOR ADVERTISING REGULATION.

Defendant Ryan contends that the Salinas Ordinance is invalid because State law governs the field of outdoor advertising, and further that since State law requires compensation for removal of non-conforming signs, the City Or-

dinance which does not provide compensation for such removal, violates Defendant's right of equal protection.

California has enacted the "Outdoor Advertising Act", the provisions of which are directed at the regulation of advertising displays adjacent to Interstate and Federal highways *(Business and Professions Code Section 5226)*. The intent of the legislature was to establish minimum standards for displays adjacent to such highways (*Business and Professions Code Section 5228*).

The act itself provides that it is not to be construed to permit the existence adjacent to any street, road or highway, including any interstate or state highway, of any outdoor advertising prohibited by law or by any ordinance of any city or county *(Business and Professions Code Section 5229)*, and a city may enact ordinances including land use or zoning ordinances, imposing restrictions on advertising displays adjacent to any street, road or highway equal to or greater than those imposed by the State act *(Business and Professions Code Section 5230)*.

It is therefore abundantly clear that the Salinas ordinance, as it affects the placement of Defendant Ryan's signs, is not in conflict with any provision of State law. There is no evidence that any of said signs are located adjacent to an Interstate or Federal aid primary highway.

The State act provides for compensation to the owners of signs which are ordered removed under the act in certain situations. But an examination of the compensation provisions of the act does not disclose any substantial conflict with the lack of any compensation provision in the City Ordinance.

For example, signs lawfully erected as of 1964 but which thereafter became nonconforming under the State act, were allowed to remain for five years, with limited compensation

to be paid only if earlier removal were ordered. (*Business and Professions Code Section 5409, 5411*).

Finally, it is clear that the intent of the Legislature in enacting provisions requiring compensation for removal of certain signs was to comply with the Federal Highway Beautification Act of 1965, Section 131(g) of Title 23 U.S.C., and "it is not otherwise the intent of the Legislature to in any manner relinquish any of its powers relating to the removal of advertising displays under the police power." (*Business and Professions Code Section 5412*).

In such circumstances the fact that provision for compensation is made in the case of certain removals and not for others is not a denial of equal protection (*People Ex. Rel. Department of Transportation v. Desert Outdoor Advertising, Inc.*, 68 CA 3d 440, 447-451).

Judgment will accordingly be granted in favor of Plaintiff and cross-defendant City of Salinas and against Defendant and cross-complainant Ryan Outdoor Advertising, Inc.

Counsel for Plaintiff will prepare the Judgment together with Findings of Fact and Conclusions of Law should the latter be requested.

DATED: May 11, 1977.

/s/ NAT. A. AGLIANO,
Nat A. Agliano,
Judge of the Superior Court.

Findings of Fact and Conclusions of Law of the Superior Court.

In the Superior Court of the State of California in and for the County of Monterey.

Salinas, A Municipal Corporation Plaintiff and Cross Defendant, vs. Ryan Outdoor Advertising, Inc., Defendant and Cross-Complainant. No. 71306.

Filed July 12, 1977.

The above entitled action was tried before the Court sitting without a jury, on March 22-24, 1977. Plaintiff and cross-defendant appeared through its attorneys, Raymond M. Haight, City Attorney, David M. Kennedy, Assistant City Attorney, and Warren J. Lynch, Associate Counsel, by Warren J. Lynch, Esquire; and defendant and cross-complainant appeared through its attorneys, Price, Postel & Parma, by Gary R. Ricks, Esquire, and Abramson, Church & Stave. The Court heard evidence, both oral and documentary, read the trial briefs and heard the arguments of counsel and the matter was submitted for decision. Having been fully advised in the premises and having duly considered the evidence, the Court, on May 11, 1977, announced its intended decision by filing and serving an Intended Decision and Memorandum of Decision and, Findings of Fact and Conclusions of Law having thereafter been demanded by defendant and cross-complainant on May 26, 1977, the Court hereby makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT.

1. Plaintiff and cross-defendant City of Salinas (hereinafter referred to as "City") is a chartered municipal corporation, organized and existing under and by virtue of the laws of the State of California.

2. Defendant and cross-complainant Ryan Outdoor Advertising, Inc., (hereinafter referred to as "Ryan") is a Texas corporation authorized and qualified to do business in the State of California.

3. Ryan is engaged in the outdoor advertising business in the City of Salinas and elsewhere.

4. On March 5, 1962, the City Council of City adopted Ordinance No. *1103* (N.C.S.), a comprehensive land use zoning ordinance based on the General Plan for the City and enacted in order to promote the public health, safety, morals, comfort and general welfare of its citizens. This ordinance became effective on April 5, 1962.

5. Ordinance No. *1103* (N.C.S.) has been codified as chapter 37 of the Salinas City Code and, as such, has been amended several times since its adoption, but the basic provisions which applied in 1962 have been continued.

6. Ordinance No. *1103* (N.C.S.) permits off-site signs and billboards only in the General Commercial (CG) zoning districts and, upon obtaining a use permit therefor, in the Unclassified (U) zoning districts; off-site signs and billboards located in other zoning districts are declared to be nonconforming uses and public nuisances, and their removal is required within 5 years of the effective date of the ordinance.

7. Ordinance No. *1488* (N.C.S.), adopted on August 16, 1971, amended Ordinance No. *1103* (N.C.S.) and defined the term "off-site" sign to mean a sign whose sponsor does not maintain offices and/or provide services at the site of the sign; Ordinance No. *1488* (N.C.S.) reaffirmed the basic provisions of Ordinance No. *1103* (N.C.S.) and continued the prohibition against off-site signs in the zone districts in which Ryans signs, as shown in Exhibit A of the Complaint, are located, and continued the five-year amor-

tization period with the further provision that all non-conforming signs then already fully amortized should be removed forthwith and should not receive the benefit of a new amortization period.

8. Ordinance No. *1103* (N.C.S.) does not provide compensation for removal of any outdoor advertising sign, or any other structure maintained in violation of its provisions.

9. Additional sign regulations of the City prescribe that no sign may be located within 500 feet of the outer limits of the right-of-way of any freeway, except signs authorized by Federal, State, County or City law (Ordinance Nos. *1020* and *1068* (N.C.S.); and no off-site sign may exceed 22 feet in height (Ordinance No. *1488* (N.C.S.)).

10. Ryan maintains off-site outdoor advertising signs at 44 locations within the City. Among the signs at these 44 locations, the signs which are listed in Exhibit A of the Complaint on file herein are maintained in zoning districts other than the General Commercial (CG) and Unclassified (U) zoning districts and became non-conforming on April 5, 1962, the effective date of Ordinance No. *1103* (N.C.S.), and their removal was required as of April 6, 1967.

11. The sign shown in Exhibit A of the Complaint as located at Sanborn Road South and Pellet, Assessor's Parcel No. 3-561-13, was removed by Ryan prior to trial of this action.

12. The population of Salinas is now 74,000 and in 1962 was 40,000.

13. The City contains approximately 9237 acres of land and is divided into the following zoning districts (containing the following number of acres and percentages of land):

ACRES	ZONE		PERCENTAGE
964	"U"	Unclassified	10%
944	"A"	Agriculture	10%
900	"C"	Commercial (other than CG)	10%
274	"CG"	General Commercial	3%

1077	"M"	Manufacturing	19%
4380	"R"	Residential	47.4%

The General Commercial (CG) zoning districts comprise 3% of the City's total area, and 6% of the City's non-residential area.

14. The U. S. 101 Freeway runs through the heart of the City of Salinas for approximately 6 miles; substantial areas of General Commercial (CG) and Unclassified (U) zoning districts border the freeway. (Plaintiff's Exhibit 6).

15. General Commercial (CG zoning districts are located substantially near the core of the City and border the following major streets in the City (which are heavily traveled): (Plaintiff's Exhibit 6).

STREET NAME	APPROXIMATE LENGTH (COMBINING BOTH SIDES OF STREET)
Market Street	2 miles
Abbott Street	2¾ miles
East Alisal Street	¾ mile
North Main Street	¼ mile
John Street	¼ mile

16. Outdoor advertising signs are different in their very nature from other means of conveying messages in the field of advertising; they are large permanent fixtures designed to attract attention; they hold a captive audience in that they cannot be turned off or set aside.

17. Outdoor advertising signs significantly affect the appearance of a city and the peace and safety of its citizens.

18. The promotion of traffic safety and the enhancement of community aesthetic values are among the reasons which prompted the adoption of Ordinance No. *1103* (N.C.S.).

19. The twenty-two foot height restriction of Ordinance No. *1488* (N.C.S.) seeks to accommodate the competing interests of necessary visibility and unnecessary prominence.

20. The purpose of the 500-foot freeway regulation of Ordinance No. *1020* (N.C.S.) is to preserve the amenity of such facilities for the entire public and to protect the investment of public funds in the beautification of them.

21. There is no evidence that the General Commercial (CG) zoning districts adjacent to the freeway will not accommodate reasonably visible signs, notwithstanding the aforementioned 500-foot distance and 22-foot height restrictions.

22. At the time of the adoption of Ordinance No. *1488* (N.C.S.), which amended Ordinance No. *1103* (N.C.S.), a Ryan representative participated in the formulation of the provisions of that ordinance as a member of a sign study committee appointed by the City Council of City. The Ryan representative advised the City Council of City that the proposed ordinance (Ordinance No. *1488* (N.C.S.)) was reasonable regulation of off-site advertising and supported the adoption of the ordinance, although he was not in complete agreement with all its provisions.

23. Fifteen years has elapsed since the adoption of Ordinance No. *1103* (N.C.S.) in 1962, a period of time which well exceeds the five-year amortization provision of the ordinance. During this period of time, the investment in the subject signs has been allowed to be recouped.

24. Outdoor off-site advertising is a medium which acts as a conduit for messages of a political, social and commercial nature.

25. Ordinance No. *1103* (N.C.S.), as amended, deals principally with the places at which but one of a variety of advertising methods may be carried on; it does not purport to control the content of any message.

26. The California Outdoor Advertising Act is directed at providing minimum standards for the regulation of ad-

vertising displays adjacent to Interstate and Federal Highways; its provisions requiring compensation for removal of certain signs are designed to comply with provisions of the Federal Highway Beautification Act of 1965 (Section 131 (g) of Title 23 U. S. C.).

27. Three of the signs here in question are located adjacent to an Interstate or Federal aid primary highway.

Based upon the aforementioned Findings of Fact, the Court makes its Conclusions of Law as follows:

CONCLUSIONS OF LAW.

1. Ordinance No. *1103* (N.C.S.), adopted by the City Council of the City of Salinas on March 5, 1962, is a valid exercise of the police power.

2. The promotion of traffic safety and the enhancement of community aesthetic values are valid and acceptable reasons for regulation and prohibition of off-site signs in certain locations.

3. The twenty-two foot height restriction is not unreasonable or arbitrary.

4. The purpose of the 500-foot freeway regulation is legitimate.

5. The question of whether it would be detrimental to locate off-site advertising signs in areas of the City other than those in which they are permitted, is an issue that is debatable from a safety, aesthetic and economic standpoint; the legislative resolution of that issue should not be disturbed.

6. Under the provisions of Section 10,811 of Ordinance *1103* (N.C.S.), the signs in question are public nuisances as a matter of law and there is no triable issue of fact.

7. The five-year amortization period prescribed by Ordinance No. *1103* (N.C.S.) is a reasonable exercise of the police power.

8. Ryan is not entitled to compensation for any damages it might sustain in having to remove its off-site advertising signs that are the subject of the instant action.

9. The manner and means used in the conveyance of messages, including commercial messages, are factors to be considered in determining whether free speech is improperly restrained.

10. Outdoor advertising signs being different in their very nature from other means of conveying messages in the field of advertising, their unique characteristics justify their separate classification in the field of advertising.

11. The protection of the interests of the citizens of Salinas in their environment, peace and safety justify the ordinance's partial restriction on off-site advertising; such regulation is not an unlawful restraint of freedom of speech.

12. Ordinance No. *1103* (N.C.S.) does not conflict in any way, as it affects the placement of defendant's signs, with the California Outdoor Advertising Act. The California Outdoor Advertising Act has not, by its very terms, preempted the field of regulation of outdoor advertising.

13. The fact that the California Outdoor Advertising Act provides for compensation in the case of certain sign removals, and the Salinas ordinance does not, is not a violation of Ryan's right to equal protection of the laws; there is no substantial conflict between the compensation provisions of the State act and the lack of any compensation provision in the City ordinance.

14. A mandatory injunction shall issue enjoining Ryan from maintaining, and ordering it to remove forthwith, all its off-site outdoor advertising signs and structures listed in Exhibit A of the Complaint on file herein; and City is entitled to costs of suit.

Appendix B — Findings of Fact and Conclusions of Law of the Superior Court

15. Ryan shall take nothing by its Complaint and Amended Cross-complaint.

DATED: July 11, 1977

/s/ NAT A. AGLIANO
JUDGE OF THE SUPERIOR COURT.

Judgment After Trial by Court.

In the Superior Court of the State of California in and for the County of Monterey.

Salinas, a Municipal Corporation, Plaintiff and Cross Defendant, vs. Ryan Outdoor Advertising, Inc., Defendant and Cross-Complainant. No. 71306.

Filed July 12, 1977.

The above entitled action was tried before the Court sitting without a jury, on March 22-24, 1977. Plaintiff and cross-defendant appeared through its attorneys, Raymond M. Haight, City Attorney. David M. Kennedy, Assistant City Attorney, and Warren J. Lynch, Associate Counsel, by Warren J. Lynch, Esquire; and defendant and cross-complainant appeared through its attorneys, Price, Postel & Parma, by Gary R. Ricks, Esquire, and Abramson, Church & Stave. The Court heard evidence, both oral and documentary, read the trial briefs and heard the arguments of counsel and the matter was submitted for decision. Having been fully advised in the premises and having duly considered the evidence, the Court, on May 11, 1977, announced its intended decision by filing and serving an Intended Decision and Memorandum of Decision and, Findings and Conclusions of Law having thereafter been signed, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendant and cross-complainant is enjoined from maintaining and shall remove forthwith, all of its off-site advertising signs and structures present at those locations specified in Exhibit A of the Complaint on file herein.

2. Defendant and cross-complainant take nothing by its Complaint and amended Cross-Complaint herein, and plaintiff and cross-defendant have judgement against defendant

and cross-complainant for its costs herein, in the amount of _____.

DATED: July 11, 1977.

/s/ NAT A. ANGLIANO
Judge of the Superior Court

APPENDIX C.

Denial of Hearing.

Clerk's Office, Supreme Court, 4250 State Building, San Francisco, California 91402

Jan 28, 1981

I have this day filed Order,

Hearing Denied,

In re: 1 Civ. No. 43194 Salinas, vs. Ryan Outdoor Advertising, Respectfully,

Clerk

APPENDIX D.

Notice of Appeal.

In the Court of Appeal of the State of California First Appellate District, Division Three.

Salinas, a municipal corporation, Plaintiff, Cross-Defendant and Respondent, v. Ryan Outdoor Advertising, Inc., Defendant, Cross-Complainant and Appellant. 1 Civ. No. 43194 (Sup. Ct. No. 71306).

Filed April 13, 1981.

NOTICE IS HEREBY GIVEN that defendant and cross-complainant RYAN OUTDOOR ADVERTISING, INC. hereby appeals to the United States Supreme Court from the final judgment of the Court of Appeal of the State of California, First Appellate District, Division Three, which upheld the constitutionality of City of Salinas Ordinance No. 1103, as amended in Ordinance Nos. 1488, 1020, and 1068. This appeal is taken pursuant to 28 USC §1257(2).

Dated: April 9, 1981.

PRICE, POSTEL & PARMA,
GARY R. RICKS,
J. TERRY SCHWARTZ,
200 East Carrillo Street,
Santa Barbara, California 93101,
By /s/ TERRY SCHWARTZ,
J. Terry Schwartz,
Attorneys for Defendant, Cross-Complainant and Appellant.

APPENDIX E.

Constitutional and Statutory Provisions

The First Amendment to the United States Constitution provides, in part:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."

The Fifth Amendment to the United States Constitution provides, in part:

> "nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution provides, in part:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

Relevant Portions of Chapter 37 of the Salinas City Code

Relevant Portions of the Municipal Code of the City of Salinas.

Article XVI. "U" District.
(Unclassified District Regulations.)

Sec. 37-177. Purpose.

The "U" district is an interim district which shall be employed only for the temporary protection of areas in the city which require extensive or detailed planning before a permanent zoning classification can properly be established. "U" districts shall include all of the incorporated area within the city of Salinas not shown on the official zoning map of Salinas as being zoned or classified into any other zoning district. (Ord. No. 1103 (NCS), § 10,717.)

Sec. 37-178. Permitted uses.

Any use permitted in any district as provided herein may be permitted in a "U" district; provided, that a use permit therefor shall first be secured. All conditions and require-

ments applying to any use shall be as specified in the use permit granted therefor, but shall in no case be less restrictive than the conditions and requirements for such use in the zoning district in which such use is first permitted. (Ord. No. 1103 (NCS), § 10,718.)

Article XVIIIA. Sign Regulations.

Sec. 37-236.30. Definitions.

(a) "Animated sign" means a sign with action or motion, flashing color changes activated by electrical energy, electronic or manufactured sources of supply, but not including wind-actuated elements such as flags, banners or pennants.

(b) "Continuous lighting" means illumination of a sign in which the artificial light or lights are maintained in a stationary condition and remaining constant in intensity and color at all times when such sign is illuminated.

(c) "Directional or directing sign" means an on-premises incidental sign designed to guide or direct pedestrian or vehicular traffic.

(d) "Directory sign" means a sign containing no pictorial matter and only the minimum amount of reading matter necessary to identify the names, professions and locations of the occupants of the building to which such sign is appurtenant.

(e) "Double-faced sign" means a sign with two surfaces against, upon or through which the message is displayed. Both surfaces of a double-faced sign must be parallel to each other and must be tied together into one integral unit with no visible air space between the surfaces.

(f) "Free-standing sign" means any sign erected upon or standing on the ground, also referred to as a ground sign. For the purpose of this article said signs shall be supported from the ground by one or more poles, columns, uprights

or braces. This definition is applicable only to on-site signing.

(g) "Indirect lighting" means the illumination of a sign by a light source that is not a component part of the sign.

(h) "Internal lighting" means the illumination of a sign by a light source that is a component part of the sign itself.

(i) "Obsolete sign" means a sign which no longer serves its originally intended function or is declared unsafe by the building official.

(j) "Occupancy frontage" means the length of that portion of a building occupied by a single business abutting a street, alley, parking area, or other means of customer access such as an arcade, mall, or walkway.

(k) "Occupancy frontage computation." For the purpose of establishing the square footage of signing for an occupancy, each occupancy frontage will be the sole measure for the square footage of signing allowable for that same frontage.

(l) "Off-site sign" means a sign whose sponsor does not maintain offices and/or provide services at the site of the sign.

(m) "On-site sign" means any sign used exclusively:

(a) To advertise the sale or lease of the property upon which such sign is located;

(b) To designate the name of the owner or occupant of the premises or to identify such premises;

(c) To advertise the business conducted or services rendered or the goods produced or sold upon the property upon which such sign is located if the sign is on the same side of any public street or highway and within eight hundred feet of the entrance to the site at which the business is conducted or services are rendered or goods are produced or sold.

(n) "Projecting sign" means any sign which is suspended from or is supported by a wall or building and which projects outward therefrom.

(o) "Revolving sign" means a sign which revolves three hundred sixty degrees but does not exceed eight rpm.

(p) "Roof sign" means a sign mounted upon and projecting above a roof or other architectural features such as, but not limited to, mansards, parapets, and the like.

(q) "Shopping center" means a group of commercial establishments, the perimeter of which is clearly definable, developed on a continuous area of land, planned and developed as a single unit and providing on-site parking appropriate to the number, types and sizes of stores.

(r) "Sign" means any structure, symbol, display, device or painting on or in any other manner making representation on or attached to the land, building(s), structure(s), or part thereof. Such structures, displays, symbols, devices or paintings include but are not limited to letters, numbers, words, illustrations, decorations, emblems, trademarks and lights. Signs used by public utilities for the safety, wwelfare or convenience of the public shall be exempt from the provisions of this definition: examples of such signs are: "Danger — High Voltage," "Public Telephone," or "Underground Cable."

(s) "Sign area computation." The area of each sign surface shall be computed by calculating the area within the frame enclosing the letters or material which composes the sign, or, where there is no frame, by calculating the area of the surface upon, against or through which the message is displayed. Where a sign is composed of separate letters which are placed or painted on a building or other similar surface not designed specifically for sign presentation, the

sign area shall be computed on the basis of a shape closest to the extremities encompassing individual letters or words.

(t) "Street frontage" means the property line of a lot abutting the right-of-way line of public streets, excluding alleys to which such property has the legal right of access.

(u) "Temporary sign" means any sign, banner, pennant or advertising display consisting of any material intended to be displayed for a short period of time only.

(v) "Wall sign" means any sign posted or painted on, suspended from or otherwise affixed to the wall of any building or structure in such a position that is essentially parallel to the wall of the building and not more than one foot from such wall. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-236.31. Sign regulations for signs in the A, R-1, R-2 and R-3 districts.

A. The following signs shall be permitted:

1. One sign one square foot in area with a maximum height of nine feet for the purposes of identifying the name and address of the occupant of the premises;

2. One bulletin or announcement board for a permitted nonresidential use not to exceed sixteen square feet in area:

3. One sign not to exceed a total of sixteen square feet for any permitted institutional or multi-family use;

4. One temporary sign not more than six square feet in area pertaining to the sale, lease or rental of the premises on which it is located;

5. SUBDIVISION DIRECTIONAL SIGNS. Unlighted, temporary, subdivision directional signs not to exceed one hundred eighty square feet in area, for the purpose of providing necessary travel directions to a subdivision development located in the city, may be permitted as a conditional use. Said sign may contain, in addition to travel

directions, the name of the land development project to which it pertains, including a characteristic trademark or other identifying insignia. The city may impose any conditions which it deems necessary in order to make the sign, to the extent possible, compatible to the development in the vicinity, including the requirement of a signed statement by the applicant, owner of the signs and the owner or lessee of the property on which the signs are to be placed, agreeing that if such signs are not removed within five days after expiration of permit, they may be removed by the city without further notice;

6. CONSTRUCTION SIGNS. Not more than two construction signs, each not to exceed sixty-four square feet in area, shall be permitted. Such signs may not be lighted;

7. All signs, except subdivision directional signs and construction signs, may be illuminated if the lighting is continuous or indirect, and shielded from abutting properties or the street. Said signs shall be stationary and contain no visible moving parts;

8. All signs shall be located at least ten feet from the exterior property line;

9. All signs painted on, attached to or projecting from a wall, and all free-standing signs, shall require a building permit. No permit is required for temporary signs of six square feet or less in area.

B. The following signs may be permitted with a conditional use permit subject to zoning administrator approval:

1. Signs larger than those specified above but only if it is demonstrated that a larger sign is essential to the operation of the building or use, not detrimental to surrounding properties, or of exceptional design. Such increase shall not exceed thirty percent of the permitted dimensions.

C. Signs not permitted in these districts:

1. Off-site signs;

2. Animated signs;

3. Revolving signs;

4. Roof signs;

5. Signs characterizing a person or object. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-236.32. Sign regulations for signs in the C-O district.

A. The following signs shall be permitted:

1. One sign not to exceed sixteen square feet in total area for the purpose of identifying the premises;

2. Name plates and other directing signs appurtenant to any permitted use provided that the aggregate area of all such signs for any one building shall not exceed eight square feet, or two square feet in area for each occupant whose name appears thereon, whichever is greater. Such signs shall contain no reading matter except the names, professions or locations of the occupants of the buildings;

3. One bulletin or announcement board for a permitted nonresidential use not to exceed twelve square feet in area;

4. One temporary sign six square feet in area pertaining to the sale, lease or rental of the premises on which it is located;

5. SUBDIVISION DIRECTIONAL SIGNS. Unlighted, temporary, subdivision directional signs not to exceed one hundred eighty square feet in area, for the purpose of providing necessary travel directions to a subdivision development located in the city, may be permitted as a conditional use. Said sign may contain, in addition to travel directions, the name of the land development project to which it pertains, including a characteristic trademark or other identifying insignia. The city may impose any con-

ditions which it deems necessary in order to make the sign, to the extent possible, compatible to the development in the vicinity, including the requirement of a signed statement by the applicant, owner of the signs and the owner or lessee of the property on which the signs are to be placed, agreeing that if such signs are not removed within five days after expiration of permit, they may be removed by the city without further notice;

6. CONSTRUCTION SIGNS. Not more than two construction signs, each not to exceed sixty-four square feet in area, shall be permitted. Such signs may not be lighted;

7. All signs may be illuminated if the lighting is continuous, indirect or internal, and shielded from abutting properties or the street. Said signs shall be stationary and contain no visible moving or flashing parts;

8. All signs shall be located at least ten feet from the exterior property line;

9. No free-standing sign or pole sign shall be higher than twelve feet at the top of the sign;

10. All signs, except subdivision directional signs and construction signs, painted on, attached to or projecting from a wall, and all free-standing signs, shall require a building permit. No permit is required for temporary signs of six square feet or less in area.

B. The following signs may be permitted with a conditional use permit subject to zoning administrator approval:

1. Signs larger than those specified above but only if it is demonstrated that a larger sign is essential to the operation of the building or use, not detrimental to surrounding properties, or of exceptional design. Such increase shall not exceed thirty percent of the permitted dimensions.

C. Signs not permitted in this district:

1. Off-site signs which advertise products or services not available on the property where the sign is located;

2. Animated signs;

3. Revolving signs;

4. Roof signs;

5. Signs characterizing a person or object. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-236.33. Sign regulations for signs in the C-N district.

A. The following signs shall be permitted:

1. One free-standing sign to identify the shopping center. Said sign shall not exceed twenty-five feet in height or thirty square feet in area on any one face. The total sign area of signs with more than two faces shall not exceed sixty square feet;

2. One individual sign for any retail use. The size of the sign shall not exceed one half square foot per foot of occupancy frontage. No matter how small the frontage of an establishment, at least eight square feet of signing will be allowed. The sign shall be located under eave line, unless otherwise specified in the planned unit development permit approved for the center;

3. For the purpose of establishing the square footage of signing for an occupancy, each occupancy frontage will be the sole measure for the square footage of signing allowable for that same frontage;

4. The vertical dimension of individual signs shall not exceed three feet;

5. A general announcement or directory sign for a shopping center no larger than sixteen square feet for the total center or two square feet for each use represented therein, whichever is greater. If detached, the sign shall not exceed

six feet in height inclusive of ornamentation and shall not be part of any other sign structure;

6. All signs may be illuminated if the lighting is continuous, indirect or internal and shielded from abutting properties. Said signs shall be stationary and contain no visible moving or flashing parts;

7. Advertising of a product available on the premises is permitted on any of the permitted signs provided that such advertising does not occupy more than one eighth of any individual sign;

8. There shall be a common theme to the signing of a shopping center. The theme should include some identifiable common element or elements such as: dimension, construction material, color scheme, lighting or lettering style. All signs in the center shall be integral components of the common theme;

9. All signs painted on, attached to or projecting from a wall, and all free-standing signs, shall require a building permit. No permit is required for temporary signs of six square feet or less in area;

10. CONSTRUCTION SIGNS. Not more than two construction signs, each not to exceed sixty-four square feet in area, shall be permitted. Such signs may not be lighted.

B. The following signs may be permitted with a conditional use permit subject to zoning administrator approval:

1. Signs larger than those specified above but only if it is demonstrated that a larger sign is essential to the operation of the building or use, not detrimental to surrounding properties, or of exceptional design. Such increase shall not exceed thirty percent of the permitted dimensions;

2. Sign lighting other than that permitted in subsection A may be permitted provided that such lighting is not detrimental to surrounding properties and provided that it serves

a useful purpose such as improving the environment or establishing an architectural theme.

C. Signs not permitted in this district:

1. Off-site signs which advertise products or services not available on the property where the sign is located;

2. Temporary signs;

3. Animated signs;

4. Revolving signs;

5. Signs characterizing a person or object;

6. Roof signs. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-236.34. Sign regulations for signs in the C-C, C-G and C-I districts.

A. The following signs shall be permitted:

1. The total area of signing shall not exceed two square feet for each foot of occupancy frontage. For multi-faced signs, all surfaces will be included as part of the total area of signing;

2. Where the face of a building is twenty feet high or higher, the signing allowance for that frontage may be increased ten percent for each increment of ten feet or portion thereof above the initial twenty feet;

3. For the purpose of establishing the square footage of signing for an occupancy, each occupancy frontage will be the sole measure for the square footage of signing allowable for that same frontage;

4. For the purpose of determining square footage of allowable signing for outdoor sales-type uses, i.e., used car lots, mobile home sales, service stations and similar uses, street frontage will be substituted for occupancy frontage. The total signing in such a case in the C-C and C-I zones shall not exceed one square foot of signing for each linear foot of street frontage; in the C-G zone, it shall not exceed

two square feet of signing for each linear foot of street frontage;

5. SUBDIVISION DIRECTIONAL SIGNS. Unlighted, temporary, subdivision directional signs not to exceed one hundred eighty square feet in area, for the purpose of providing necessary travel directions to a subdivision development located in the city, may be permitted as a conditional use. Said sign may contain, in addition to travel directions, the name of the land development project to which it pertains, including a characteristic trademark or other identifying insignia. The city may impose any conditions which it deems necessary in order to make the sign, to the extent possible, compatible to the development in the vicinity, including the requirement of a signed statement by the applicant, owner of the signs and the owner or lessee of the property on which the signs are to be placed, agreeing that if such signs are not removed within five days after expiration of permit, they may be removed by the city without further notice;

6. CONSTRUCTION SIGNS. Not more than two construction signs, each not to exceed sixty-four square feet in area, shall be permitted. Such signs may not be lighted;

7. WINDOW SIGNS. Signs attached to or painted on window surfaces shall not exceed more than twenty-five percent of the window area. The square footage of such signing shall not be chargeable to the otherwise allowed signing. No temporary signs shall be affixed to the outside surface of any window;

8. Within the limitations of the above measures, signing may consist of any combination of free-standing signs, signs attached flat against the wall, projecting signs, and wall signs;

9. In the case of a shopping center:

(a) One additional free-standing center identification sign is permitted. Such a sign shall not exceed twenty-five feet in height or fifty square feet in area on any one face. The total area of a sign with more than two faces shall not exceed one hundred square feet. Height of sign may be increased to a maximum of thirty-five feet by providing one foot of setback for each additional foot in height.

(b) One general announcement or directory sign is permitted. Such a sign shall be no larger than sixteen square feet for the total center or two square feet for each use represented therein, whichever is greater. If detached, the sign shall not exceed six feet in height inclusive of ornamentation and shall not be part of any other sign structure.

(c) For each individual occupancy within the center, the total area of signing shall not exceed one square foot of signing for each foot of occupancy frontage,

(d) Signs for each individual occupancy within the center shall be either wall signs, signs attached flat against the wall, or signs hanging under the eave parallel to the building frontage;

10. A free-standing sign shall not exceed a height of twenty-five feet at property line. This height may be increased to a maximum of thirty-five feet by providing one foot of setback for each additional foot in height;

11. All signs, except subdivision directional signs and construction signs, may be illuminated only with continuous neon lighting or with continuous indirect or internal lighting;

12. Advertising of a product available on the premises is permitted on any of the permitted signs provided that such advertising does not occupy more than an eighth of any individual sign;

13. When permitted, the supporting members of a roof sign shall be free of any extra bracing, angle iron, guy wires

and cables. The supports shall appear to be an architectural and integral part of the building. The distance from roof to top of sign shall not exceed: ten feet for buildings one to three stories high; thirty feet for buildings four or more stories high;

14. Off-site signs are permitted in the C-G district subject to the following provisions:

(a) No roof-top billboard or outdoor advertising structures shall be allowed, and existing ones shall be considered non-conforming,

(b) No such billboard or outdoor advertising structures shall exceed twelve feet by twenty-five feet or twelve feet by forty feet per face. Both sides of outside advertising structures may be used for purposes of advertising,

(c) HEIGHT. No off-site sign or sign structure shall exceed twenty-two feet in height above existing grade or street level, whichever is higher.

SPACING. In order to prevent excessive concentration of advertising signs, no off-site sign or sign structure shall be located closer to any other off-site sign or sign structure on the same street or the same intersection, any part of which sign is visible from the same direction, than the horizontal distances specified herein.

Any two signs and sign structures, the advertising areas of which are visible from any point and exceed in the aggregate,

(1) Less than 50 square feet — 100 feet

(2) More than 50 but less than 100 square feet — 200 feet directional signs not to exceed one hundred eighty square feet in area, for the

(4) More than 500 square feet — 500 feet

Not more than two signs or sign structures may be erected as a single unit if such signs are in the same verticle plane,

are not separated by more than two feet, and are built at one time by a single owner;

15. All signs painted on, attached to or projecting from a wall, and all free-standing signs, shall require a building permit. No permit is required for temporary signs of six square feet or less in area;

16. One temporary sign pertaining to the sale, lease or rental of the premises on which it is located is permitted. Such a sign shall not exceed one hundred square feet in size and shall be removed after no longer than two years.

B. The following signs may be permitted with a conditional use permit subject to zoning administrator approval:

1. Signs larger than those specified above, but only if it is demonstrated that a larger sign is essential to the operation of the building or use, not detrimental to surrounding properties, or of exceptional design. Such increase shall not exceed thirty percent of the permitted dimensions;

2. Signs which characterize any object or person providing that such signs are desirable and in character with the area where they are located;

3. Roof signs or revolving signs if located at least one hundred fifty feet from any residential, C-O or C-N zone. The subject and structure of such sign must be an integral part of the architectural design of the building. Said sign shall only identify the premises.

C. Signs not permitted in these districts:

1. Animated signs;

2. Off-site signs, in the C-C and C-1 districts, which advertise products or services not available on the property where the sign is located. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-236.35. Sign regulations for signs in the C-T district.

A. The following signs shall be permitted:

1. A combination of wall signs, projecting signs, and free-standing signs to identify the premises or products and services available on the premises shall be allowed;

2. Said signs shall not exceed in aggregate two square feet in area for each linear foot of street frontage, or one hundred square feet of aggregate area, whichever is greater;

3. Signs may be double-faced. In such a case the maximum area requirements shall be calculated on the basis of both faces of this type of sign;

4. All signs shall be located entirely on the premises and shall not encroach into any public right-of-way at any point of measurement;

5. All signs, except subdivision directional signs and construction signs, may be illuminated only with continuous neon lighting or with continuous indirect or internal lighting. Permitted signs and sign lighting may not be arranged in such a manner as to be confused with traffic signs or signals;

6. SUBDIVISION DIRECTIONAL SIGNS. Unlighted, temporary, subdivision directional signs not to exceed one hundred eighty square feet in area, for the purpose of providing necessary travel directions to a subdivision development located in the city, may be permitted as a conditional use. Siad sign may contain, in addition to travel directions, the name of the land development project to which it pertains, including a characteristic trademark or other identifying insignia. The city may impose any conditions which it deems necessary in order to make said sign, to the extent possible, compatible to the development in the vicinity, including the requirement of a signed statement by the applicant, owner of the signs and the owner or lessee

of the property on which the signs are to be placed, agreeing that if such signs are not removed within five days after expiration of permit they may be removed by the city without further notice;

7. CONSTRUCTION SIGNS. No more than two construction signs, each not to exceed sixty-four square feet in area, shall be permitted. Such signs may not be lighted;

8. All signs painted on, attached to or projecting from a wall, and all free-standing signs, shall require a building permit. No permit is required for temporary signs of six square feet or less in area;

9. One temporary sign pertaining to the sale, lease or rental of the premises on which it is located is permitted. Such a sign shall not exceed one hundred square feet in size and shall be removed after no longer than two years.

B. The following signs may be permitted with a conditional use permit subject to zoning administrator approval or a planned unit development permit subject to planning commission approval:

1. Signs larger than those specified above but only if it it is demonstrated that a larger sign is essential to the operation of the building or use, not detrimental to surrounding properties, or of exceptional design. Such increase shall not exceed thirty percent of the permitted dimensions.

C. The following signs may be permitted with a conditional use permit subject to zoning administrator approval:

1. Roof signs or revolving signs if located at least one hundred fifty feet from any residential, C-O or C-N zone. Said signing shall only identify the premises. The subject and structure of such sign must be an integral part of the architectural design of the building;

2. Signs which characterize any object or person providing that such signs are desirable and in character with the area where they are located.

D. Signs not permitted in this district:

1. Off-site signs which advertise products or services not available on the property where the sign is located;

2. Temporary signs;

3. Animated signs. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-236.36. Sign regulations for signs in the M district.

A. The following signs shall be permitted:

1. One free-standing pole sign to identify the premises not to exceed fifty square feet in area for any one face and not to exceed a height of thirty-five feet from mean ground level. The total area of signs with more than two faces shall not exceed one hundred feet;

2. Wall signs to identify the premises not to exceed two square feet for every one linear foot of building frontage up to a maximum of three hundred square feet. In the case of buildings with frontage on two or more streets, the signing on any one street shall not exceed the above requirements. Such signs shall be flat against the building and shall not extend above the top of the wall to which it is attached;

3. Directional signs provided that they conform to standard traffic directional signs and symbols;

4. One ground sign not to exceed one hundred square feet in area per side. The total of signs with more than two faces shall not exceed two hundred square feet;

5. SUBDIVISION DIRECTIONAL SIGNS. Unlighted, temporary, subdivision directional signs not to exceed one hundred eighty square feet in area, for the purpose of providing necessary travel directions to a subdivision development located in the city, may be permitted as a

conditional use. Said sign may contain, in addition to travel directions, the name of the land development project to which it pertains, including a characteristic trademark or other identifying insignia. The city may impose any conditions which it deems necessary in order to make the sign, to the extent possible, compatible to the development in the vicinity, including the requirement of a signed statement by the applicant, owner of the signs and the owner or lessee of the property on which the isgns are to be placed, agreeing that if such signs are not removed within five days after expiratoin of permit they may be removed by the city without further notice.

6. CONSTRUCTION SIGNS. Not more than two construction signs, each not to exceed sixty-four square feet in area, shall be permitted. Such signs may not be lighted;

7. All signs, except subdivision directional signs and construction signs, may be illuminated only with indirect neon or internal continuous lighting;

8. All signs painted on, attached to or projecting from a wall, and all free-standing signs, shall require a building permit. No permit is required for temporary signs of six square feet or less in area;

9. One temporary sign pertaining to the sale, lease or rental of the premises on which it is located is permitted. Such a sign shall not exceed one hundred square feet in size and shall be removed after no longer than two years.

B. The following signs may be permitted with a conditional use permit subject to zoning administrator approval:

1. Signs larger than those specified above but only if it is demonstrated that a larger sign is essential to the operation of the building or use, not detrimental to surrounding properties, or of exceptional design. Such increase shall not exceed thirty percent of the permitted dimensions;

2. Roof signs or revolving signs if located at least one hundred fifty feet from any residential, C-O or C-N zone. The subject and structure of such sign must be an integral part of the architectural design of the building. Said sign shall only identify the premises;

3. Signs which characterize any object or person providing that such signs are desirable and in character with the area where they are located.

C. Signs not permitted in this district:

1. Animated signs;

2. Off-site signs which advertise products or services not available on the property where the sign is located. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-236.37. Abatement of nonconforming signs.

Signs which are nonconforming or become nonconforming through annexation, zone change or provisions of this article, including approved variances and amendments hereto, shall be removed or made to conform within the following specified time periods, whichever is longer:

A. Five years from September 15, 1971;

B. The useful life adopted for such sign for the purpose of depreciation under Section 167 of the Internal Revenue Code of 1954.

Extensions beyond the aforesaid abatement period may be allowed through a use permit. The permit may only be issued if the sign has historical significance, denotes the character of the city, or is architecturally suited or designed so as to enhance the surroundings.

All nonconforming signs which have been fully amortized under ordinances adopted heretofore and in effect on August 16, 1971 are not to receive the benefit of a new period of amortization prescribed in this article, whether the prior

ordinance or ordinances are repealed by the ordinance codified in this article or not; but such nonconforming signs are required to be removed forthwith.

Flashing signs and wall-painted signs which are nonconforming must be brought into conformity within one year from September 15, 1971. (Ord. No. 1488 (NCS), § 3 (part).)

Sec. 37-251. Conditional use permits.

The purpose of the conditional use permit is to allow the proper integration into the community of uses which may be suitable only in specific locations in the zoning district or only if such uses are designed or laid out on the site in a particular manner. A conditional use permit shall be required for all uses listed as conditional uses in the district regulations or elsewhere in this chapter that are hereafter created, changed, converted or enlarged, either wholly or in part. In considering an application for a conditional use, the zoning administrator shall give due regard to the nature and condition of all adjacent uses and structures. In authorizing a conditional use, the zoning administrator may impose such requirements and conditions with respect to location, construction, maintenance and operation, and site planning, in addition to those expressly stipulated in this chapter for the particular use, as he deems necessary for the protection of adjacent properties and the public interest.

(a) Application shall be made by the property owner or certified agent thereof to the zoning administrator on a form prescribed for this purpose by the city of Salinas. Conditional use permit, revocable, conditional, or valid for a term period, may be issued for any of the uses or purposes for which such permits are required or permitted by the terms of this chapter. Granting of a conditional use permit does not exempt the applicant from complying with all require-

ments of the Salinas building code or other applicable sections of this chapter.

(b) The application fee shall be set by the council in an amount consistent with the actual cost of processing an application. No part of such fee shall be refundable.

(c) Accompanying Maps and Drawings. Maps and drawings necessary to demonstrate that conditions set forth herein are fulfilled.

(d) The zoning administrator shall set the matter for public hearing not less than thirty days after date of application and shall send notice to owners of all property located within three hundred feet of the property for which a conditional use permit is requested not less than ten days prior to the date of such hearing. Failure of owners to receive notice of hearing shall in no way affect the validity of action taken.

(e) Provided that the zoning administrator is satisfied that the proposed structure or use conforms to the requirements and the intent of this chapter and the Salinas general plan, that any additional conditions stipulated by the zoning administrator as deemed necessary in the public interest will be met, and that such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community, the zoning administrator shall approve the issuance of a conditional use permit. Upon such approval and if no appeal from the decision of the zoning administrator is filed within the time provided for appeal in Section 37-253, the zoning administrator shall issue a conditional use permit.

(f) Appeal. Any person having standing to do so under the law who is aggrieved by the zoning administrator's decision to grant or deny a use permit may appeal such decision in the manner set forth in Section 37-253.

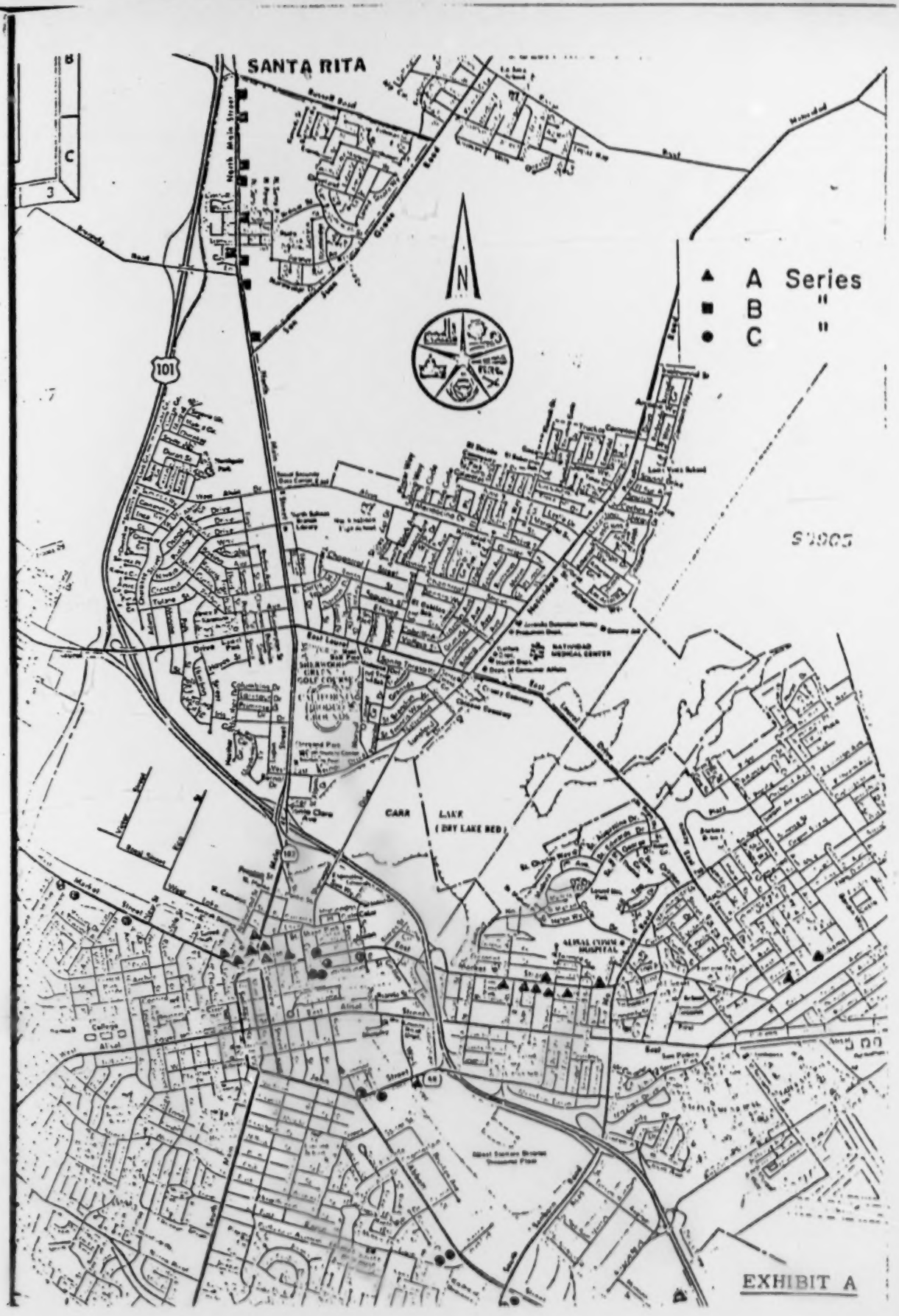
(g) Following the issuance of a conditional use permit, the building inspector shall issue a building permit at such time as compliance with all other sections of this chapter and all rules and regulations of the city are ascertained, and shall ensure that development is undertaken and completed only in conformity to the approved plans.

(h) Beginning on the day of initial establishment of the use for which a use permit is granted, a certificate attesting to the existence of such use permit shall be permanently maintained in the public view. Where such use or premises are, by nature, open to the public, maintenance in the public view may be confined to the hours during which use or premises are open to the public. Where such use or premises are not, by nature, open to the public, a copy of such certificate shall be maintained in public view at all times. Such posting shall be a condition of every use permit and shall be agreed to in writing by the applicant prior to the approval of such use permit by the zoning administrator. A printed, weatherproof certificate shall be issued by the zoning administrator on the effective date of the use permit. Such certificate shall contain the permit number and the effective date and expiration date of the use permit.

(i) No person, including the original applicant, shall reapply for a similar conditional use permit on the same land, building or structure within a period of one year from date of the final decision on such previous application unless such decision is a denial without prejudice.

(j) The performance or conducting of any development, maintenance, operation or use of any property in any manner other than in strict compliance with all the terms and conditions of a conditional use permit which has been duly issued for the regulation and control of such property shall be unlawful, and any such violation shall be punishable as a misdemeanor. Each day that such violation continues shall

constitute a separate offense. The penalties that may be imposed for any such violation shall be the same as provided in the general penalty provisions of this Code and shall be in addition to the procedure for revocation of the conditional use permit according to its own terms. (Ord. No. 1103 (NCS), § 10,808; Ord. No. 1176 (NCS), § 11; Ord. No. 1183 (NCS), § 1; Ord. No. 1481 (NCS), § 29; Ord. No. 1523 (NCS), § 2.)


SANTA RITA
A Series
B "
C "
EXHIBIT A

No. 80-1797

MAY 28 1981

ALEXANDER L. STEVAS
Clerk

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

RYAN OUTDOOR ADVERTISING, INC.,
Appellant,

vs.

SALINAS, A Municipal Corporation,
Respondent.

MOTION TO DISMISS OR AFFIRM

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No. 80-1797

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

RYAN OUTDOOR ADVERTISING, INC.,
Appellant,

VS.

SALINAS, A Municipal Corporation,
Respondent.

MOTION TO DISMISS OR AFFIRM

The Respondent (hereinafter, the City of Salinas) moves the Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Court of Appeal of the State of California for the First Appellate District on the grounds that the appeal does not present a substantial federal question and that the decision below is correct.

I

OPINIONS BELOW

The opinions below are correctly stated in Appellant's (hereinafter, Ryan) Jurisdictional Statement.[1]

[1]References herein to appendices are those attached to the Jurisdictional Statement. "Jur.St." followed by a number refers to pages of the text of the Jurisdictional Statement.

II

JURISDICTION

Jurisdiction is asserted by Ryan under Title 28, United States Code § 1257 (2). (Jur. St. 2.)

III

STATEMENT OF FACTS

A. The Salinas Ordinances and General Commercial (C-G) Zoning Districts

On March 5, 1962, the City Council of the City of Salinas adopted Ordinance No. *1103* (N.C.S.), a comprehensive land use zoning ordinance based upon the General Plan for the City and enacted to promote the public health, safety, morals, comfort and general welfare of its citizens. The ordinance, which became effective April 5, 1962, has been codified as Chapter 37 of the Salinas City Code, and has been amended on occasions since its adoption, but the basic provisions which applied in 1962, have been continued. Ordinance No. *1103* (N.C.S.) permitted off-site signs and billboards only in the General Commercial (C-G) zoning districts and, upon obtaining a use permit therefore, in the Unclassified (U) zoning district. Off-site signs and billboards in existence in other zoning districts on the effective date of the ordinance were declared to be nonconforming uses and public nuisances and their removal was required within five years of the effective date of the ordinance. (Jur.St. 29 [a]).

In 1971, the City Council of the City of Salinas appointed a sign study committee to review Ordinance No. *1103* (N.C.S.) and that committee participated in the formula-

tion of the provisions of Ordinance No. *1488* (N.C.S.), adopted August 16, 1971, which amended, in part, Ordinance No. *1103* (N.C.S.). A Ryan representative was a member of that sign study committee, and that representative advised the City Council of the City of Salinas that the proposed Ordinance No. *1488* was a reasonable regulation of off-site advertising and that the adoption of the ordinance was supported although the representative was not in complete agreement with all of its provisions. (Jur.St. 29[a]; 32[a]).

Ordinance No. *1488* (N.C.S. defined the term "off-site" sign to mean a sign whose sponsor does not maintain offices and/or provide services at the site of the sign. It reaffirmed the basic provisions of Ordinance No. *1103* (N.C.S.), continued the prohibition of off-site signs in all districts except the C-G and U districts, continued the five-year amortization with the further provision that all non-conforming signs, those already fully amortized, should be removed forthwith and should not receive the benefit of a new amortization period. Ordinance No. *1488* (N.C.S.) also provided that no off-site sign may exceed 22 feet in height. (Jur.St. 29[a]; 30[a]).

The General Commercial (C-G) zoning districts are located substantially near the core of the City and border six major, heavily traveled streets with a length of six miles when combining both sides of each street. The C-G zoning districts comprise 3% of the City's total area and 6% of the City's non-residential area. (Jur.St. 31[a]).

Two of the major streets bordering the C-G zoning districts, Market Street and John Street, are State Highways (Highways 183 and 68 respectively).

B. Essential Facts About Ryan's Business

Ryan claims that its outdoor advertising structures in Salinas consist of signs in "thirty-four physical locations." (Jur.St. 5). That claim is incorrect. Ryan maintained off-site outdoor advertising signs at forty-four locations in the City at the time of trial. (Jur.St. 30[a]). That number is now forty-three as discussed below. Ryan's Map (Jur.St. Appendix F) has symbols for signs located at forty-one locations. Ryan's claim that it has thirty-four sign locations was first erroneously made to the Court of Appeal below and has been carried forward without correction.

Prior to the decision of the Court of Appeal below, Ryan removed several sign structures located at one physical location which were signs subject to the within litigation (Jur. St. 5[a], 6[a]), thereby reducing the number of physical sign locations from forty-four to forty-three, including eighteen "A" Series sign locations. The "A" Series signs are the subject of the within action.

The record below reflects that the "A" Series signs were in existence on April 5, 1962, the effective date of Ordinance No. *1103* (N.C.S.).

Ryan purchased the sign structures at issue in 1965, at least three years after they had been declared nonconforming. (Jur.St. 3[a]).

The population of the City of Salinas was 74,000 persons at the time of trial. (Jur.St. 30[a]).

Ryan's expert witness, Haskell Barry, testified that all of Ryan's signs reached the equivalent of 75% of the total population of the City of Salinas daily or 55,500 persons. He further testified that Ryan's signs in the permitted C-G district reached the equivalent of a "weak" 50% of the total population of the City of Salinas daily, or 37,000 persons. If all of Ryan's nonconforming signs (27), the "A" and "B" Series, were eliminated, leaving only the 16 structures within the C-G districts, Ryan's exposure in Salinas would be reduced by only 33% (from 55,500 persons daily to 37,000 persons).

All of Ryan's signs in the C-G districts exceed the 22-foot height limitation. Ryan states that the standardized height of billboards in the industry is not less than 35 feet (Jur.St. 4) and that its "C" Series signs could not be lowered and still maintain industry visibility standards (Jur. St. 6).

Ryan's witness testified that the height of its 16 signs in the permitted C-G districts was "25, 26 feet" or just 3 to 4 feet higher than required by the City of Salinas. He further testified that Ryan had never sought an amendment to the ordinance to seek accommodations for the signs and that the City of Salinas has never asked that the height limitation be complied with. The lower Court concluded that the twenty-two foot height restriction is not unreasonable or arbitrary. (Jur.St. 33[a]).

IV

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

A. The Ordinance Does Not Violate the First Amendment

The case of *Suffolk Outdoor Advertising Co. v. Hulse,* 43 N.Y.2d 483, 373 N.E.2d 263 (1977) upheld a community-wide ban on off-site billboards and this Court dismissed the appeal therefor for want of a substantial federal question. (439 U.S. 808). However, in another case upholding a community-wide total ban of outdoor advertising structures, *Metromedia, Inc. v. City of San Diego,* 26 Cal.3d 848, 610 P.2d 407, 164 Cal.Rptr. 510 (1980) this Court noted probable jurisdiction, 66 L.Ed.2d 127 (Oct. 14, 1980) (No. 80-195), and a decision is now pending on appeal before this Court.

Salinas considers the correct rule to be that a prohibition of off-site billboards does not violate the First Amendment.

However, unlike the San Diego ordinance in the *Metromedia* case, the Salinas ordinance is *not* a total ban ordinance, as it allows off-site signs in the General Commercial, "C-G" district and in the unclassified "U" district, reaching the view of some 37,000 persons daily.

Ryan, as it must, concedes that there may be a legislative ban on billboards in certain scenic sections of the city or, more generally, to the non-commercial districts (Jur.St. 18), citing *Thomas Cusack Co. v. Chicago,* 242 U.S. 256 (1916) (billboards may be prohibited in "residence districts"); *Modjeska Sign Studios, Inc. v. Berle,* 43 N.Y.2d 468, 473, 373 N.E.2d 255, 257, 402 N.Y.S.2d 359, 362 (1977)

(billboards may be excluded to "ensure the natural beauty" of park areas), appeal dismissed, 439 U.S. 809 (1978).

The Salinas ordinance does allow, as the facts demonstrate, the coexistence of billboards and traffic and aesthetic concerns within First Amendment values without imposing the "grievous burden" on those interests that concerned the concurring judge in the case of *Donnelly & Sons v. Campbell,* No. 79-1575, Concurring Slip Op at 19 (1st Cir. Dec. 22, 1980) (Pettine, J., concurring.)

The typical time, place, or manner restriction involves some limitation on a mode of expression. *Id.* at 5; e.g., *Grayned v. Rockford,* 408 U.S. 104, 116-21 (1972) (anti-noise ordinance involving grounds adjacent to school); *Cameron v. Johnson,* 390 U.S. 611 (1968) (Picketing that unreasonably interferes with access to public buildings); *Adderly v. Florida,* 385 U.S. 39 (1966) demonstrations on jailhouse grounds); *Cox v. Louisiana,* 379 U.S. 559 (1965) picketing or parading near courthouse).

The Salinas ordinance is merely "quantitative"; it reduces the number of Ryan's existing signs from 43 to 16, and reduces exposure by 33%, or from 55,000 persons daily to a mere 37,000 persons daily. The Salinas ordinance is a proper time, place or manner restriction, valid under any criteria.

Ryan argues that the 22-foot height limitation effectively destroys its operation as a consultant recommends a height not less than 35 feet. (Jur.St. 4).

The height limitation question is simply a non-issue for the reasons that the average height of Ryan's signs in the

"C-G" district was "25-26 feet", that Ryan has never requested the City of Salinas to consider an amendment of the ordinance to accommodate its signs, and that the City of Salinas has never asked or demanded that Ryan meet the twenty-two foot height limitation. In any event, should the height limitation be found to be unreasonable, arbitrary and unconstitutional, it could be severed from the balance of the ordinance. *Carter v. Gallagher* (1971) 337 F.Supp. 626, 629.

Ryan implies in its Jurisdictional Statement that a reduction of its sign market in Salinas would render its operation uneconomical as the Salinas market represents fifty-percent of its advertising plant in the California Central Coast region (Jur. St. 2, 3). However, the record below reflects that Ryan has no billboards in the cities of Monterey (the second largest city in Monterey County), Carmel-By-The-Sea, and Pacific Grove, each in Monterey County, each in the Monterey-Salinas area and each in the California Central Coast region, as each of these cities has a total city ban on outdoor billboards and that, for "political" and "PR" reasons, Ryan has moved away from those communities.

The City of Salinas does not concede that it has any obligation at all to allow additional areas for Ryan's billboards outside of the "C-G" and "U" districts so that Ryan can make up for the lack of billboards in those cities.

B. Appellant Is Not Entitled to Compensation for the Removal of Its Signs

Regulation of signs through a general zoning ordinance is a valid exercise of the City's police power. *Village of*

Euclid v. Amber Realty Co. 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303. Elimination of nonconforming uses in California is generally accomplished through removal of the use without compensation following a reasonable amortization period. *National Advertising Co. v. County of Monterey,* (1970) 1 Cal.3d 875, 464 P.2d 33.

Just compensation paid under eminent domain law (taking of property) is to be distinguished from the police power (regulation of property). If the regulation of property is unreasonable or arbitrary as it relates to private property, then the law of eminent domain may apply. *Sun Oil v. United States* (1978) 572 F.2d 786.

Although Ryan's signs had a five-year amortization period commencing April 5, 1962, those signs are still in existence as of the date of this appeal, over 19 years later.

Use of a five-year amortization period for removal of nonconforming outdoor signs is reasonable, is not arbitrary and does not require just compensation. *City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 274 P.2d 34 (5 years to cease plumbing business upheld); *County of Santa Barbara v. Purcell* (1967) 251 Cal.App.2d 169, 59 Cal.Rptr. 345 (5 year amortization of billboards upheld); *National Advertising Co. v. County of Monterey,* supra, (1970) 1 Cal.3d 875, 464 P.2d 33, 83 Cal.Rptr. 577 (1 year amortization of billboards upheld); *People v. Adco Advertisers* (1973) 35 Cal.App.3d 507, 110 Cal.Rptr. 849 (2 year, 8-month billboard amortization upheld); *Livingston Rock & Gravel Co. v. County of Los Angeles* (1954) 43 Cal.2d 121, 272 P.2d 4 (20 year amortization for removal of cement mixing plant upheld); *Art Neon Co. v.*

City and County of Denver (1973) 488 F.2d 118 (5 year amortization of billboards upheld).

Ryan had the burden of presenting evidence that the amortization period was unreasonable. *National Advertising Co. v. County of Monterey,* supra, at page 879. Ryan made no attempt to meet its burden at the trial level. (Jur. St. 10[a]).

V

CONCLUSION

Ryan fails to raise any issue not adequately decided below on state grounds or representing a substantial federal question. Wherefore, the City of Salinas respectfully submits that the instant appeal should be dismissed or, alternatively, the judgment below should be affirmed.

Dated: May 26, 1981

At Salinas, California

Respectfully submitted,

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